

Fill in this information to identify the case:

United States Bankruptcy Court for the:

Southern District of Texas

Case number (if known): \_\_\_\_\_ Chapter 11

☐ Check if this is an amended filing

## Official Form 201

# Voluntary Petition for Non-Individuals Filing for Bankruptcy

06/22

If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write the debtor's name and the case number (if known). For more information, a separate document, *Instructions for Bankruptcy Forms for Non-Individuals*, is available.

**1. Debtor's name**

Galleria 2425 Owner, LLC

**2. All other names debtor used in the last 8 years**

Include any assumed names, trade names, and *doing business as names*

**3. Debtor's federal Employer Identification Number (EIN)**

3 6 - 4 8 9 6 7 3 8

**4. Debtor's address**

**Principal place of business**

1001 West Loop South

Number Street

Houston, TX 77027

City State ZIP Code

Harris

County

**Mailing address, if different from principal place of business**

Number Street

City State ZIP Code

**Location of principal assets, if different from principal place of business**

Number Street

City State ZIP Code

**5. Debtor's website (URL)**

**6. Type of debtor**

☐ Corporation (including Limited Liability Company (LLC) and Limited Liability Partnership (LLP))

☐ Partnership (excluding LLP)

☒ Other. Specify: Limited Liability Company

Debtor Galleria 2425 Owner, LLC  
Name

Case number (if known) \_\_\_\_\_

**7. Describe debtor's business****A. Check one:**

- ☐ Health Care Business (as defined in 11 U.S.C. § 101(27A))
- ☐ Single Asset Real Estate (as defined in 11 U.S.C. § 101(51B))
- ☐ Railroad (as defined in 11 U.S.C. § 101(44))
- ☐ Stockbroker (as defined in 11 U.S.C. § 101(53A))
- ☐ Commodity Broker (as defined in 11 U.S.C. § 101(6))
- ☐ Clearing Bank (as defined in 11 U.S.C. § 781(3))
- ☒ None of the above

**B. Check all that apply:**

- ☐ Tax-exempt entity (as described in 26 U.S.C. § 501)
- ☐ Investment company, including hedge fund or pooled investment vehicle (as defined in 15 U.S.C. § 80a-3)
- ☐ Investment advisor (as defined in 15 U.S.C. § 80b-2(a)(11))

**C. NAICS (North American Industry Classification System) 4-digit code that best describes debtor. See <http://www.uscourts.gov/four-digit-national-association-naics-codes>.**

5 3 1 1**8. Under which chapter of the Bankruptcy Code is the debtor filing?**

A debtor who is a "small business debtor" must check the first subbox. A debtor as defined in § 1182(1) who elects to proceed under subchapter V of chapter 11 (whether or not the debtor is a "small business debtor") must check the second sub-box

**Check one:**

- ☐ Chapter 7
- ☐ Chapter 9

☒ Chapter 11. **Check all that apply:**

- ☒ The debtor is a small business debtor as defined in 11 U.S.C. § 101(51D), and its aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$3,024,725. If this sub-box is selected, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).
- ☐ The debtor is a debtor as defined in 11 U.S.C. § 1182(1), its aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$7,500,000, **and it chooses to proceed under Subchapter V of Chapter 11.** If this sub-box is selected, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return, or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).
- ☐ A plan is being filed with this petition.
- ☐ Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).
- ☐ The debtor is required to file periodic reports (for example, 10K and 10Q) with the Securities and Exchange Commission according to § 13 or 15(d) of the Securities Exchange Act of 1934. File the *Attachment to Voluntary Petition for Non-Individuals Filing for Bankruptcy under Chapter 11* (Official Form 201A) with this form.
- ☐ The debtor is a shell company as defined in the Securities Exchange Act of 1934 Rule 12b-2.

☐ Chapter 12**9. Were prior bankruptcy cases filed by or against the debtor within the last 8 years?**☐ No☒ Yes. District Southern District of Texas When 7/5/2023 Case number 23-60036  
MM / DD / YYYY

If more than 2 cases, attach a separate list.

District \_\_\_\_\_ When \_\_\_\_\_ Case number \_\_\_\_\_  
MM / DD / YYYY

**10. Are any bankruptcy cases pending or being filed by a business partner or an affiliate of the debtor?**☒ No☐ Yes. Debtor \_\_\_\_\_ Relationship \_\_\_\_\_

List all cases. If more than 1, attach a separate list.

District \_\_\_\_\_ When \_\_\_\_\_  
MM / DD / YYYY

Case number, if known \_\_\_\_\_

Debtor Galleria 2425 Owner, LLC  
Name

Case number (if known) \_\_\_\_\_

**11. Why is the case filed in this district?**

Check all that apply:

- ☒ Debtor has had its domicile, principal place of business, or principal assets in this district for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other district.
- ☐ A bankruptcy case concerning debtor's affiliate, general partner, or partnership is pending in this district.

**12. Does the debtor own or have possession of any real property or personal property that needs immediate attention?**

☒ No

☐ Yes. Answer below for each property that needs immediate attention. Attach additional sheets if needed.

**Why does the property need immediate attention?** (Check all that apply.)

- ☐ It poses or is alleged to pose a threat of imminent and identifiable hazard to public health or safety.  
What is the hazard?  
\_\_\_\_\_

- ☐ It needs to be physically secured or protected from the weather.

- ☐ It includes perishable goods or assets that could quickly deteriorate or lose value without attention (for example, livestock, seasonal goods, meat, dairy, produce, or securities-related assets or other options).

- ☐ Other \_\_\_\_\_

**Where is the property?** \_\_\_\_\_

Number Street

City

State

ZIP Code

**Is the property insured?**

☐ No

☐ Yes. Insurance agency \_\_\_\_\_  
Contact name \_\_\_\_\_  
Phone \_\_\_\_\_

**Statistical and administrative information**

**13. Debtor's estimation of available funds?**

Check one:

- ☐ Funds will be available for distribution to unsecured creditors.
- ☒ After any administrative expenses are paid, no funds will be available for distribution to unsecured creditors.

**14. Estimated number of creditors**

- ☒ 1-49 ☐ 50-99 ☐ 1,000-5,000 ☐ 5,001-10,000 ☐ 25,001-50,000 ☐ 50,000-100,000
- ☐ 100-199 ☐ 200-999 ☐ 10,001-25,000 ☐ More than 100,000

**15. Estimated assets**

- ☐ \$0-\$50,000 ☐ \$1,000,001-\$10 million ☐ \$500,000,001-\$1 billion
- ☐ \$50,001-\$100,000 ☒ \$10,000,001-\$50 million ☐ \$1,000,000,001-\$10 billion
- ☐ \$100,001-\$500,000 ☐ \$50,000,001-\$100 million ☐ \$10,000,000,001-\$50 billion
- ☐ \$500,001-\$1 million ☐ \$100,000,001-\$500 million ☐ More than \$50 billion

Debtor Galleria 2425 Owner, LLC  
Name

Case number (if known) \_\_\_\_\_

**16. Estimated liabilities**

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> \$0-\$50,000          | <input type="checkbox"/> \$1,000,001-\$10 million              | <input type="checkbox"/> \$500,000,001-\$1 billion     |
| <input type="checkbox"/> \$50,001-\$100,000    | <input type="checkbox"/> \$10,000,001-\$50 million             | <input type="checkbox"/> \$1,000,000,001-\$10 billion  |
| <input type="checkbox"/> \$100,001-\$500,000   | <input checked="" type="checkbox"/> \$50,000,001-\$100 million | <input type="checkbox"/> \$10,000,000,001-\$50 billion |
| <input type="checkbox"/> \$500,001-\$1 million | <input type="checkbox"/> \$100,000,001-\$500 million           | <input type="checkbox"/> More than \$50 billion        |

**Request for Relief, Declaration, and Signatures****WARNING --**

Bankruptcy fraud is a serious crime. Making a false statement in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

**17. Declaration and signature of authorized representative of debtor**

- The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.
- I have been authorized to file this petition on behalf of the debtor.
- I have examined the information in this petition and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 12/05/2023  
MM/ DD/ YYYY**X**/s/ Dward Darjean

Signature of authorized representative of debtor

Dward Darjean

Printed name

Title Manager**18. Signature of attorney****X**/s/ James Q. Pope

Signature of attorney for debtor

Date 12/05/2023

MM/ DD/ YYYY

James Q. Pope

Printed name

The Pope Law Firm

Firm name

6161 Savoy Drive 1125

Number Street

Houston

City

TX

State

77036

ZIP Code

(713) 449-4481

Contact phone

jamesp@thepopelawfirm.com

Email address

24048738

Bar number

TX

State



Fill in this information to identify the case:

Debtor name Galleria 2425 Owner, LLC

United States Bankruptcy Court for the:

Southern District of Texas

Case number (if known): \_\_\_\_\_

☐ Check if this is an amended filing

## Official Form 204

### Chapter 11 or Chapter 9 Cases: List of Creditors Who Have the 20 Largest Unsecured Claims and Are Not Insiders

12/15

A list of creditors holding the 20 largest unsecured claims must be filed in a Chapter 11 or Chapter 9 case. Include claims which the debtor disputes. Do not include claims by any person or entity who is an *insider*, as defined in 11 U.S.C. § 101(31). Also, do not include claims by secured creditors, unless the unsecured claim resulting from inadequate collateral value places the creditor among the holders of the 20 largest unsecured claims.

	Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim (for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
					Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured claim
1	2425 WL, LLC 13498 Pond Springs Rd. Austin, TX 78729				\$25,092,415.80	\$17,500,000.00	\$7,592,415.80
2	Ali Choudhry 1001 West Loop South 700 Houston, TX 77027						\$960,000.00
3	Ash Automated Control Systems, LLC PO Box 1113 Fulshear, TX 77441		HVAC Repair				\$1,548.31
4	Caz Creek Lending 118 Vintage Park Blvd No. W Houston, TX 77070		Tax Lien		\$800,238.37	\$17,500,000.00	\$800,238.37
5	Cirro Electric PO Box 60004 Dallas, TX 75266						\$27,000.00
6	City of Houston PO Box 1560 Houston, TX 77251						\$7,500.00
7	CNA Insurance Co PO Box 74007619 Chicago, IL 60674						\$63,216.48
8	Datawatch Systems 4520 East West Highway 200 Bethesda, MD 20814						\$18,626.10

Debtor Galleria 2425 Owner, LLC

Case number (if known) \_\_\_\_\_

Name

	Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim (for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
					Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured claim
9	Firetron PO Box 1604 Stafford, TX 77497						\$30,040.34
10	First Insurance Funding 450 Skokie Blvd Northbrook, IL 60062						\$5,507.36
11	Gulfstream Legal Group 1300 Texas St Houston, TX 77002						\$57,799.06
12	Harris County Tax Assessor PO Box 4622 Houston, TX 77210				\$957,825.16	\$17,500,000.00	\$957,825.16
13	HNB Construction, LLC 521 Woodhaven Ingleside, TX 78362						\$58,207.11
14	Lexitas PO Box Box 734298 Dept 2012 Dallas, TX 75373						\$2,813.33
15	MacGeorge Law Firm 2921 E 17th St Bldg D Suite 6 Austin, TX 78702						\$34,445.48
16	National Bank of Kuwait 299 Park Ave. 17th Floor New York, NY 10171			Disputed	\$26,000,000.00	\$17,500,000.00	\$26,000,000.00
17	Nationwide Security 2425 W Loop S 300 Houston, TX 77027						\$32,549.70
18	Nichamoff Law Firm 2444 Times Blvd 270 Houston, TX 77005						\$46,984.22
19	TKE 3100 Interstate North Cir SE 500 Atlanta, GA 30339						\$57,881.13
20	Zindler Cleaning Service Co 2450 Fondren 113 Houston, TX 77063						\$2,110.88

**IN THE UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

IN RE: **Galleria 2425 Owner, LLC**

CASE NO

CHAPTER 11

**VERIFICATION OF CREDITOR MATRIX**

The above named Debtor hereby verifies that the attached list of creditors is true and correct to the best of his/her knowledge.

Date 12/05/2023 Signature /s/ Dward Darjean  
Dward Darjean, Manager

2425 WL, LLC  
13498 POND SPRINGS RD.  
AUSTIN, TX 78729

ADT  
PO BOX 382109  
PITTSBURGH, PA 15251

ALI CHOUDHRY  
1001 WEST LOOP SOUTH 700  
HOUSTON, TX 77027

ASH AUTOMATED CONTROL  
SYSTEMS, LLC  
PO BOX 1113  
FULSHEAR, TX 77441

CAZ CREEK LENDING  
118 VINTAGE PARK BLVD NO. W  
HOUSTON, TX 77070

CFI MECHANICAL, INC  
6109 BRITTMOORE RD  
HOUSTON, TX 77041

CIRRO ELECTRIC  
PO BOX 60004  
DALLAS, TX 75266

CITY OF HOUSTON  
PO BOX 1560  
HOUSTON, TX 77251

CNA INSURANCE CO  
PO BOX 74007619  
CHICAGO, IL 60674

COMCAST  
PO BOX 60533  
CITY OF INDUSTRY, CA 91716

DATAWATCH SYSTEMS  
4520 EAST WEST HIGHWAY 200  
BETHESDA, MD 20814

ENVIRONMENTAL COALITION  
INC  
PO BOX 1568  
STAFFORD, TX 77497

FERGUSON FACILITIES  
SUPPLIES  
PO BOX 200184  
SAN ANTONIO, TX 78220

FIRETRON  
PO BOX 1604  
STAFFORD, TX 77497

FIRST INSURANCE FUNDING  
450 SKOKIE BLVD  
NORTHBROOK, IL 60062

GULFSTREAM LEGAL GROUP  
1300 TEXAS ST  
HOUSTON, TX 77002

HARRIS COUNTY TAX  
ASSESSOR  
PO BOX 4622  
HOUSTON, TX 77210

HNB CONSTRUCTION, LLC  
521 WOODHAVEN  
INGLESIDE, TX 78362

KINGS 111 EMERGENCY  
COMMUNICATIONS  
751 CANYON DRIVE, SUITE 100  
COPPELL, TX 75019

LEXITAS  
PO BOX BOX 734298 DEPT 2012  
DALLAS, TX 75373

LOGIX FIBER NETWORKS  
PO BOX 734120  
DALLAS, TX 75373

MACGEORGE LAW FIRM  
2921 E 17TH ST BLGD D SUITE 6  
AUSTIN, TX 78702

MUELLER WATER TREATMENT  
1500 SHERWOOD FOREST DR.  
HOUSTON, TX 77043

NATIONAL BANK OF KUWAIT  
299 PARK AVE. 17TH FLOOR  
NEW YORK, NY 10171

NATIONWIDE SECURITY  
2425 W LOOP S 300  
HOUSTON, TX 77027

NICHAMOFF LAW FIRM  
2444 TIMES BLVD 270  
HOUSTON, TX 77005

TKE  
3100 INTERSTATE NORTH CIR SE 500  
ATLANTA, GA 30339

WASTE MANAGEMENT  
PO BOX 660345  
DALLAS, TX 75266

ZINDLER CLEANING SERVICE  
CO  
2450 FONDREN 113  
HOUSTON, TX 77063

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**In re:**

**GALLERIA 2425 Owner, LLC**

**Debtor.**

§  
§  
§  
§  
§

**Case No. 23-34815 (JPN)**

**Chapter 11**

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**NATIONAL BANK OF KUWAIT, S.A.K.P, NEW YORK BRANCH'S  
EMERGENCY MOTION TO ENFORCE THE GATE-KEEPING  
PROVISIONS OF THE CONFIRMED CHAPTER 11 PLAN**

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**This motion seeks an order that may adversely affect you. If you oppose the motion, you should immediately contact the moving party to resolve the dispute. If you and the moving party cannot agree, you must file a response and send a copy to the moving party. You must file and serve your response within 21 days of the date this was served on you. Your response must state why the motion should not be granted. If you do not file a timely response, the relief may be granted without further notice to you. If you oppose the motion and have not reached an agreement, you must attend the hearing. Unless the parties agree otherwise, the Court may consider evidence at the hearing and may decide the motion at the hearing.**

**Represented parties should act through their attorney.**

**Emergency Relief has been requested if the Court considers the motion on an emergency basis, then you will have less than 21 days to answer. If you object to the requested relief or if you believe that the emergency consideration is not warranted, you should file an immediate response.**

**TO THE HONORABLE JEFFREY P. NORMAN, U.S. BANKRUPTCY JUDGE:**

National Bank of Kuwait, S.A.K.P. New York Branch (“NBK”) files this Emergency Motion to Enforce the gate-keeping provisions in the confirmed and unstayed chapter 11 plan [*see* ECF No. 566 (the “Plan” and “Confirmation Order”)] (the “Motion”) and states as follows:

**PRELIMINARY STATEMENT**

1. The Plan, which was confirmed pursuant to the Court’s June 22, 2024 Confirmation Order, imposes certain gate-keeping obligations on parties that are prosecuting or intend to

prosecute claims against parties who received releases of estate claims under the confirmed Plan, including NBK.

2. Although more than 3 months have passed since entry of the Confirmation Order, two parties, Naissance Galleria, LLC (“Naissance”) and the Debtor’s principal Ali Choudhri, with pending actions against NBK that relate to the Debtor (the “Pending Actions”) have neither dismissed the pending actions nor have they come to this Court to satisfy the prerequisites for continuing the Pending Actions. The Pending Actions, on their face, assert claims that are identical to or very similar to, claims that have been dismissed with prejudice by this Court in, for example, Adversary No. 23-03263. [Case No. 23-0326, ECF No. 26].

3. Accordingly, NBK requests that the Court enforce the terms of the Plan and Confirmation Order by staying the pending litigation described below and ordering the plaintiffs to show cause why those actions are pursuing colorable claims that are not estate claims that have been released, including establishing an expedited briefing schedule.

**LOCAL RULE 9013-1(i) STATEMENT REGARDING EMERGENCY RELIEF**

4. NBK seeks emergency relief on or before October 18, 2024 because one of the Pending Actions is currently set for trial on November 18, 2024. Ruling on this motion sufficiently before November 18, 2024, is appropriate to avoid unnecessary cost and expenses and to conserve judicial resources across both State and Federal Courts. Efforts to move this November 18 trial date or otherwise obtain the voluntary dismissal of this action with Naissance, the plaintiff in that action, have been unsuccessful. The undersigned certifies that these facts in support of emergency relief are accurate.

### **JURISDICTION AND VENUE**

5. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334(b). This matter is a core proceeding under 28 U.S.C. § 157(b). The Court retained jurisdiction to enforce the terms of the Plan and otherwise to enter orders to assist in the implementation of the Plan pursuant to Article X of the Plan and Confirmation Order. The Court has the inherent power to enforce its Confirmation Order and the general power to issue orders in aid of implementation of the confirmed Plan pursuant to 11 U.S.C. §§ 105(a) and 1142.

6. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

### **BACKGROUND REGARDING THE PENDING ACTIONS**

7. The Debtor, Naissance, and Choudhri have asserted causes of action against NBK primarily arising from NBK's alleged breach of the Confidential Settlement Agreement ("CSA") that remain pending and are subject to the gate-keeping provisions of the Plan and Confirmation Order. Those Pending Actions include:

- *Naissance Galleria, LLC v. Zaheer, et al*, Cause No. 2023-43755 pending in the District Court of Harris County, Texas, 80th Judicial District ("Naissance I").<sup>1</sup>
- *Naissance Galleria, LLC v. NBK*, Cause No. 2023-41091 pending in the District Court of Harris County, Texas, 129th Judicial District ("Naissance II").<sup>2</sup>
- *Galleria 2425, LLC, Naissance Galleria, LLC and Choudhri v. NBK*, Adversary Case No. 23-06009, which was filed in connection with the Debtor's prior, dismissed chapter 11 case ("Galleria I").<sup>3</sup>

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<sup>1</sup> See Ex. 1, Plaintiff's Second Amended Petition & Emergency Application for Temporary Restraining Order Against Defendant NBK.

<sup>2</sup> See Ex. 2, Plaintiff's Original Petition and Request for Temporary Restraining Order. Naissance II is set for trial on November 18, 2024 [see Ex. 3, Trial Preparation Order]. Because of the imminent trial setting, NBK seeks emergency relief.

<sup>3</sup> The previous bankruptcy case was dismissed by the Honorable Christopher Lopez on November 1, 2023 for cause on the Court's own motion. [ECF No. 565 at 2 (citing Case No. 23-60036)]. The adversary proceeding was filed on or about September 19, 2023 and a summons was requested but never served. [see Ex. 4, Adversary Case No. 23-06009 Docket Sheet]. Because Case No. 23-60036 has been dismissed and the summons never served, the prior chapter 11 case, including Adversary case No. 23-06009, should be closed.

- Adversary Case No. 23-03263, *Choudhri v. NBK and Zaheer* and Ali Choudhri's Second Amended Petition in Intervention ("Choudhri Intervention").

8. The Pending Actions assert the same basic facts and claims which this Court has found meritless. *See e.g.*, ECF No. 565 at 16 (finding the claims "are not viable"); *Id.* at 17 (holding the "the record in this case does not support his sizable but *implausible claims*." (emphasis added)). Specifically, the Court noted in its Memorandum Opinion confirming the Plan that the claims asserted by Debtor, Choudhri, and Naissance against NBK in Adversary No. 23-03263<sup>4</sup> are the same as those asserted in the first bankruptcy in Galleria I, ECF No. 1, namely, breach of the CSA, tortious interference with contract, tortious interference with business relations, fraud and fraudulent inducement/lender liability, fraudulent conveyance, estoppel, breach of good faith and fair dealing and unjust enrichment. [ECF No. 565 at 2-3].

9. They also reflect claims investigated by the Chapter 11 trustee that he found to be "weak to non-existent." [Ex. 5, 6/19/2024 Hr'g Tr. at 122:4-9; 129:9-15; 129:22-130:13].

### **THE PLAN'S GATE-KEEPING PROVISIONS**

10. The Court confirmed the Plan on June 22, 2024. [ECF No. 566] Although the Confirmation Order has been appealed, it has not been stayed.

11. The Plan and Confirmation Order include gate-keeping requirements that require parties who either are prosecuting or intend to prosecute claims against any party released of estate claims under the Plan, including specifically NBK, to the extent those claims relate to the Debtor to first obtain a ruling from the Bankruptcy Court that it is pursuing a colorable non-estate claim that has not been released by the confirmed Plan. [ECF No. 566 at 5; Plan, Art. IX(E).]

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<sup>4</sup> The Court referenced Adversary No. 23-34815 in its Order. [ECF No. 565 at 3]. However, the removed case is Adversary No. 23-03263.



12. The Debtor, Naissance and Choudhri all were served with the Plan and Confirmation Order. [ECF No. 572]

**THE PENDING ACTIONS SHOULD BE STAYED AND THE PLAINTIFFS  
REQUIRED TO SHOW CAUSE WHY THEY SHOULD PROCEED**

13. The Pending Actions are all actions subject to the gate-keeping requirements of the Plan and Confirmation Order because they assert claims against NBK related to the Debtor. It therefore is incumbent on the plaintiffs in the Pending Actions to obtain a ruling from the Court that they are prosecuting colorable, non-estate claims. Yet, in the three months since the Plan was confirmed, none of the plaintiffs in the Pending Actions have complied with those gate-keeping requirements or voluntarily dismissed them.

14. This lack of action by the Plaintiffs has required NBK to seek relief to enforce the terms of the Plan and to stay the Pending Actions. The potential harm to NBK as the result of this inaction is clear. Naissance I is scheduled for trial in about 45 days. The remaining Pending Actions are active cases on various court dockets that require attention to ensure rights, claims and defenses are not lost, even though they should not be proceeding at all.

15. Although NBK believes that none of the Pending Actions assert claims that have not been released by the Plan or that are otherwise colorable, to give effect to and enforce the terms of the Plan, two forms of relief are appropriate at this time.

16. First, the Court should stay the Pending Actions (or, if the Court were so inclined, order the removal of those actions pending in State Court to the Bankruptcy Court and then stay them) pending satisfaction by the plaintiffs in the Pending Actions of the gate-keeping requirements in the Plan.

17. Second, the Court should require those plaintiffs to demonstrate that the Pending Actions assert non-estate, colorable claims against NBK and if they fail to do so, to require the Pending Actions be dismissed.

18. In the absence of this relief, the plaintiffs seem intent not to comply with the requirements of the Plan to NBK's detriment.

### **RESERVATION OF RIGHTS**

19. NBK reserves all rights, claims, causes of action and remedies, in law or in equity, under the Plan and Confirmation Order. NBK further reserves the right to amend this Motion.

### **NOTICE**

20. In addition to service of this motion by ECF/PACER, NBK will give notice to the plaintiffs in the Pending Actions and their counsel of record in those Pending Actions to the extent known.

### **CONCLUSION**

For the foregoing reasons, the Court should grant the Motion and award NBK all other relief in law or in equity to which it has shown itself entitled. A proposed Order granting the Motion is attached as Exhibit 6.

DATED: October 2, 2024

**PILLSBURY WINTHROP SHAW PITTMAN LLP**

/s/ Charles C. Conrad

Charles C. Conrad  
Texas State Bar No. 24040721  
Ryan Steinbrunner  
Texas State Bar No. 24093201  
609 Main Street Suite 2000  
Houston, TX 77002  
Telephone: (713) 276-7600  
Facsimile: (713) 276-7634  
charles.conrad@pillsburylaw.com  
ryan.steinbrunner@pillsburylaw.com

- and -

Andrew M. Troop (Bar No. MA547179)  
Patrick E. Fitzmaurice\*  
Kwame O. Akuffo\*  
31 West 52nd Street  
New York, NY 10019-6131  
Telephone: (212) 858-1000  
Facsimile: (212) 858-1500  
andrew.troop@pillsburylaw.com  
patrick.fitzmaurice@pillsburylaw.com  
kwame.akuffo@pillsburylaw.com

\*Admitted *pro hac vice*

***Counsel for National Bank of Kuwait, S.A.K.P., New  
York Branch***

**CERTIFICATE OF SERVICE**

The undersigned certifies that on October 2, 2024, a true and correct copy of this document was served via the Court's CM/ECF system to all parties who are deemed to have consented to ECF electronic service, via email and/or U.S. first class mail, postage paid to all counsel in the Pending Actions and listed below, and also by mailing, first class, postage prepaid, to each of the parties on the attached service list.

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/s/ Charles C. Conrad  
Charles C. Conrad

# **EXHIBIT 1**

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Galleria 2425 Owner, LLC (Owner”), which is the 100% owner of the building located at 2425 West Loop S., Houston, Texas 77027 (“**2425 Building**”).

3. Azeemeh Zaheer (“**Zaheer**”), is an individual who resides, and has appeared and is represented by counsel Rodney Drinnon, 2000 West Loop South, Suite 1850, Houston, Texas 77027 and David Tang, 6711 Stella Link, #343, West University Place, Texas 77005. **ZAHEER HAS APPEARED.**

4. National Bank of Kuwait, S.A.K.P., New York Branch (“**NBK**”) is a banking corporation organized under the laws of Kuwait, acting through its New York Branch. This party may be served through its counsel, Charles Conrad, Two Houston Center, 909 Fannin, Suite 2000, Houston, Texas 77010-1018, and via email: [charles.conrad@pillsburylaw.com](mailto:charles.conrad@pillsburylaw.com). **CITATION IS REQUESTED.**

### **III.** **INTRODUCTION**

5. Defendant Zaheer was previously the managing member of Naissance Galleria LLC, however on or about July 3, 2020, Defendant Zaheer assigned all control of Naissance Galleria, LLC to Ali Choudhri. On or about July 3, 2020, Defendant Zaheer ceased having any “powers, rights, privileges, duties and discretion” as it pertains to Plaintiff Naissance Galleria LLC. Defendant Zaheer sent an email correspondence to Plaintiff’s current managing member regarding her transfer of interest to Plaintiff’s current managing member, which for all intents and purposes terminated and ratified the interest transfer by Defendant Zaheer for Naissance Galleria LLC.

6. Plaintiff Naissance Galleria LLC has been operating under the control of its current managing member since the execution of the assignment on July 3, 2020 and it is unconscionable to discover that Defendant Zaheer, three (3) years after executing the assignment is now suddenly asserting that she manages and has control over Naissance Galleria LLC. Moreover, Defendant Zaheer retained counsel and initiated litigation against third parties on behalf of Naissance Galleria, LLC three (3) years after executing the assignment. Most shockingly is that fact that, without any appearance or objection by Zaheer, the managing member of Naissance Galleria, Ali Choudhri, who has controlled Naissance Galleria LLC since around July 2020, has initiated lawsuits against Defendant Bank of Kuwait, and has entered into a sealed confidential settlement agreement on behalf of Naissance Galleria, LLC with Defendant Bank of Kuwait which is the subject of another litigation.

7. A lawsuit was originally filed against NBK, a party who has been shown to be willing to engage in bad faith actions amounting to lender liability, because of its repeated attempts to make outside deals with third parties to specifically deprive the JV and Owner of their ownership interest, and Plaintiff of its collateral interest in the 2425 Building, in any way it can.

8. Galleria 2425 Owner, LLC, filed bankruptcy to preserve the asset, which NBK vehemently opposed, and fought to have dismissed from the bankruptcy court. However, at the hearing on NBK's motion to dismiss, Galleria 2425 Owner, LLC was successful in defending against dismissal, and the bankruptcy case moved forward.

9. Galleria 2425 Owner, LLC promptly proposed a plan in the bankruptcy court, which was characterized as a "really smart" plan that "check[ed] all the boxes" for plan confirmation, according to Judge Lopez.



10. Then, after Defendant NBK lost its motion to dismiss, true to its pattern of behavior, it continued to engage in more bad faith actions by conspiring with Azeemeh Zaheer, and perhaps other yet unknown parties, to create confusion that caused havoc and further disrupted the bankruptcy case.

11. Notably, Judge Manor, in this matter, which is referenced in NBK's letter to Judge Lopez, did issue a Temporary Injunction, **which maintained the status quo of Choudhri's management and control of Naissance Galleria, LLC, but limited any actions that could be taken by Choudhri on behalf of Naissance Galleria, LLC to only those which are also approved by Zaheer, until a trial resolves the issue once and for all.**

12. After the Temporary Injunction was in place establishing Choudhri's control of Naissance Galleria, LLC, Counsel David Tang and Rodney Drinnon acting for Azeemeh Zaheer, appeared in violation of this TRO and purported to act for Naissance Galleria, LLC. They appeared on behalf of Naissance Galleria, LLC, at two separate hearings in the bankruptcy court, on or about October 12<sup>th</sup>, 2023 and November 1<sup>st</sup>, 2023. Even more egregiously, these same parties, again acting in express violation of the Temporary Injunction, filed a motion to lift the stay in the bankruptcy court, which is entirely against the fiduciary interests of plaintiff, and they request for Judge Lopez to rule against the this Court and find that Zaheer had control of, and could act for Naissance Galleria, LLC.

13. When the parties to the state court litigation returned to appear before this Court on November 13<sup>th</sup>, 2023, Judge Manor confirmed that her Temporary Injunction did not give Zaheer any right to act as the manager of Naissance Galleria, LLC, and confirmed that Choudhri was in control, subject to Zaheer's approval during the pendency of trial.

14. All of these actions, including the actions taken by Zaheer in direct violation of this Court's temporary injunction, gave rise to Judge Lopez's serious concerns about the ability to move forward with the bankruptcy case without resolution in the state court action. Judge Lopez stated in the November 1<sup>st</sup>, 2023 Status Conference the following:

"I don't have anything to qualify it in state court issues. I don't know. There's just a lot of confusing stuff, and my gut tells me that I need to dismiss this case and let you all go figure this out in State Court, because there's not enough here, and there's real concerns that I have...".

15. The fact that Zaheer, allegedly acting on behalf of Naissance filed these appearances and motions in violation of the Temporary Injunction not only makes these actions unlawful, but there could be no other purpose aside from attempting to cause the dismissal of the bankruptcy case brought by Galleria 2425 Owner, LLC, which is an action that, logically, would be counter to the company's fiduciary interests.

16. In its letter, NBK cleverly attempts to confuse the court by implying that Ms. Zaheer had control of Naissance Galleria, LLC because the order says that management decisions could not be made without her approval. This is exact same argument Zaheer made before being shut down by this Court itself, stating that its Temporary Injunction left Mr. Choudhri in control, subject to Zaheer's approval, in order to freeze all actions of the parties until trial, except that Mr. Choudhri's actions on behalf of Naissance Galleria, LLC in the instant suit have been expressly permitted.

17. Judge Weems in the 281<sup>st</sup> Civil District Court has handled cases related Galleria 2425 Owner, LLC for years, and is well aware that Ms. Zaheer has been entirely absent from any of these proceedings until on or about July 5<sup>th</sup>, 2023, when Mr. Tang appeared, allegedly for

Naissance Galleria, LLC, before that Court's ancillary docket, attempting to stop the foreclosure by NBK, at which hearing Judge Weems questioned the absence of Ms. Zaheer over the last several years, and denied the TRO, as it was not believable to Judge Weems that Zaheer had authority to act on behalf of Naissance Galleria, LLC.

18. From July 3<sup>rd</sup>, 2020, the date of signing, until or July 5<sup>th</sup>, 2023, Defendant Zaheer did not make any claims of control over Naissance Galleria, LLC, did not attempt to object to or interfere with Mr. Choudhri's management of the company, and did not make allegations of forgery regarding the assignment of the company to Choudhri. These allegations are absurd, as Defendant Zaheer has been entirely absent from the company's management for years.

19. **As a result of this conspiracy by the Defendant Bank of Kuwait and Defendant Zaheer falsely acting on behalf of Plaintiff Naissance Galleria LLC the emergency status conference requested by NBK resulted in the dismissal of the bankruptcy case.**

20. **What's interesting is that, if Ms. Zaheer was authentically the manager of Naissance Galleria, LLC, and acting in the best interests of the company, she would not have worked tirelessly to have the bankruptcy case dismissed. Any intent it has is behind the NBK debt and will be wiped out.**

21. Any actions by a manager would be a breach of fiduciary unless there is a back room deal.

22. Now that NBK has re-posted the 2425 Building for foreclosure, Plaintiff will suffer irreparable harm as a result of the defendants' actions.

IV.  
**FACTUAL BACKGROUND**

23. In 2018, Defendant NBK loaned certain funds to Galleria Owner 2425, LLC and at the same time NBK has continually interfered with the Plaintiff's ability to lease the 2425 Building to produce revenue and Plaintiff's ability to sell the 2425 Building to pay NBK off. Every time NBK has so interfered, it has then blamed the Plaintiff for its inability supposedly to meet some of the loan terms. What is now occurring is a simply a continuation of the long term interference, because Defendant National Bank of Kuwait simply wants to own the building instead of being paid off.

24. For example, in January 2021, Plaintiff Ali Choudhri, who is vilified by NBK in various pleadings, had the building at 2425 West Loop South, Houston, Texas, the main asset of the Plaintiff, had serious parties interested in building for a purchase price of \$85 million, more than enough to clear NBK's debt. A letter dated January 15, 2021 from SIBS International and two purchase contracts which would have paid off not only NBK, but left the Plaintiff with a great deal of value. **NBK, rather than facilitate this sale, disclosed confidential information and sales issued a formal notice of default**, while the SIBS International deal was in progress, killing that deal.

25. **The same was true with regard to NBK's interference with efforts to lease space in the building to provide revenue so it could operate and make loan payments.** By August 2021, this situation had become untenable due to NBK's refusal to approve new tenants and new leases, prompting the Plaintiff on August 13, 2021 to send NBK a detailed letter regarding lease-up and renewal prospects for discussions, none of which, it seemed NBK would approve.

♦ **Healthcare Service Organization**

- •Size: 130,000+ RSF – large client requirement in their preliminary planning stages:
- Industry: Healthcare Service Organization •Type of use: Administration Offices
- Direct/Sublease •Commencement date: Q3/2023 •Term:5-10 yrs. They are specifically VERY interested in amenities available, for example: deli, gym, day care, conference center (# of seats), training center (# of seats).

♦ **Invesco**

- We met with the team twice and are actively pursuing them for 2425. They are interested in a 157-month lease term for 208,830 SF of Net Rental Area.

♦ **Financial Services Firm**

- Office •AREA: West Houston (610 West, Hwy 290, Beltway 8) •SPACE: Open Concept •SIZE: Approximately 20,000 – 25,000 rsf •PARKING: 5/1000 ratio •OCCUPANCY: Late 2Q22/Early3Q22 •TERM: 36-60 months with renewal options •This tenant is currently at 24 Greenway on their top floor and have been looking at other A buildings.

♦ **Beyond Finance**

- We are discussing a 68-month lease term for +/- 40,000 rentable SF.

♦ **Banco Affirme**

- We submitted a 64-month lease term for 4,545 SF of Net Rental Area.

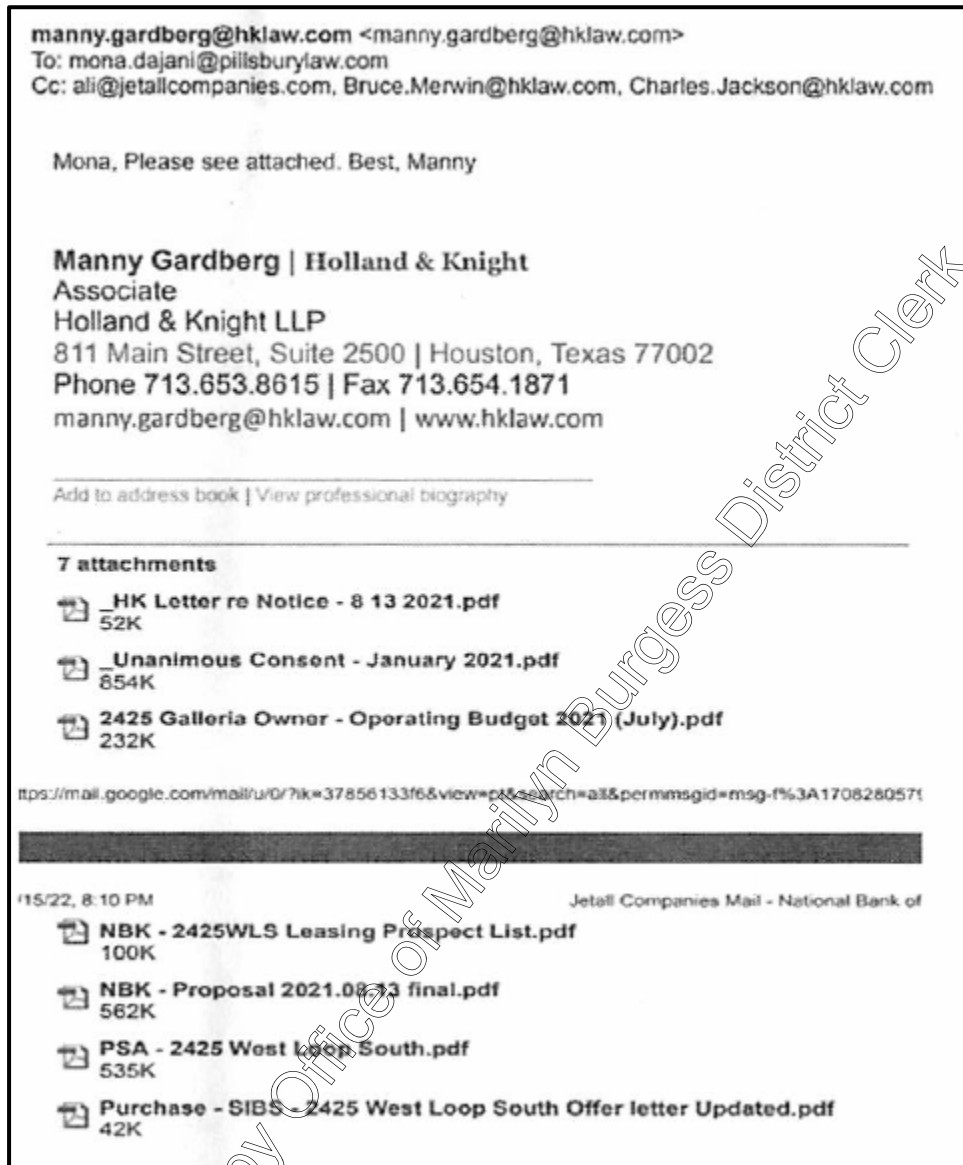
♦ **Walls Bank (existing tenant)**

- Renew 3,054 SF of rental space for 60-month term starting January 1, 2022.

♦ **Others (working directly with ownership)**

- ResMed (<https://www.resmed.com/en-us/>), interested in the entire building, working directly with Dr. Peter Farrell, Founder and Chairman
- Healthstore Holdings (<https://www.healthstore.com/>), interested in a 15-year term with 80,000 SF in phase 1 and 75,000 SF in 12 months as phase 2.
- Immunicom (<https://immunicom.com/>), interested in at least two full floors, moving HQ from San Diego, CA

26. Below is an August 16, 2021 email from counsel for the Plaintiff to NBK forwarding multiple leases for approval that **NBK had failed to approve or even respond to.**



This lack of approval, or finding obstacles to approve, was not new. In September 2019, Related Group had reached out to lease the parking garage located at the 2425 Building to be used for overflow, for parking up to 110 spaces. **NBK's authorized representative Michael Carter would not approve this lease** (note "nbkny" email address below— *i.e.* National Bank of Kuwait, New York Branch), which would have generated a great deal of revenue for the Plaintiff.

**From:** Michael Carter <Michael.Carter@nbkny.com>

**Date:** Monday, 23 September 2019 at 13:22

**To:** Azeemeh Zaheer <azeemeh@naissancecapital.co.uk>, Lisa Walker <Lisa.Walker@nbkny.com>

**Subject:** RE: LOI

My primary concern is that the tenant determines when the commencement date, presumably because they have zoning and building department approvals to complete as well as financing to arrange, which is understandable, however there does not appear to be an outside expiration date for the Commencement date. It appears they could tie up these space permanently without having to pay rent. I think you should have an outside date for Commencement.

27. The situation became so untenable that in September 2021, Galleria 2425 Owner, LLC initiated a lawsuit against NBK.

28. In good faith, even during the pendency of this litigation, the Galleria 2425 Owner, LLC was still trying to get tenants into the building and get NBK's approval to do so, so it would not claim additional breaches of loan agreements. **On July 2, 2022, Galleria 2425 Owner, LLC sent NBK five leases for approval, which NBK did not approve.**

29. *Defendant Bank of Kuwait and Galleria Owner 2425 LLC litigated for eleven (11) months until August 22, 2022, when they entered into a Confidential Settlement Agreement. The entire Confidential Settlement Agreement will be submitted to the Court in camera at the appropriate time, and the Plaintiff – Naissance Galleria should be allowed to use it in this case since the breach of that Settlement Agreement by NBK is not only actionable, but was also devastating to Plaintiff. Because NBK has a way of interpreting any action of the Plaintiff as one to breach or avoid some purported contractual obligation or other, when the reverse is entirely true, the Confidential Settlement Agreement has not been attached. **NBK has prevented Galleria***



**2425 Owner, LLC's successful performance under any and all agreements it has with NBK, including the Confidential Settlement Agreement.**

30. The Confidential Settlement Agreement permitted a timeframe in which **Galleria 2425 Owner, LLC** could sell the 2425 Building, and **Galleria 2425 Owner, LLC** was successful in receiving a hard Letter of Intent dated January 17, 2023 to purchase the building from Caldwell Soames. Again, while these negotiations were ongoing, **NBK took actions which interfered with the continuation and closing of that transaction, including issuing a notice of foreclosure on March 29, 2023 in breach of the Confidential Settlement Agreement, which Galleria 2425 Owner, LLC believes was done intentionally to prevent the sale.** The sale would have cleared the Bank of Kuwait debt as it stood at that time and left great value for **Galleria 2425 Owner, LLC and** Plaintiff. Plaintiff believes that Bank of Kuwait recognized that greater value and wanted to take it for itself by foreclosure in a “loan to own” gambit.

31. There are tremendous factual inaccuracies that NBK represents to state and federal courts and they continue into these proceedings. For example, in its Motion to Dismiss the Plaintiff's Bankruptcy, while it is absolutely true that temporary restraining orders were filed to attempt to prevent a foreclosure by NBK and its takeover of the 2425 Building, they were also **granted by this Court. The facts presented that NBK had not allowed the Galleria 2425 Owner, LLC to lease up the building to generate revenue, and had killed two transactions that Galleria 2425 Owner, LLC was working on that would have cleared NBK and left value for the Galleria 2425 Owner, LLC.**

32. Additionally, NBK posted for foreclosure in 2023 early, and against an extended grace period that this Court had given Galleria 2425 Owner, LLC, which silenced the bidding process and interest in the 2425 Building completely. No one wants to buy a building posted for



foreclosure. **Plaintiff believes that NBK knew this and did it on purpose to prevent the Galleria 2425 Owner, LLC from successfully selling the property and paying off the loan, so NBK could foreclose and become the owner of the 2425 Building.**

33. The absolute opposite is true. Representatives of Defendant NBK have admitted in writing that the following substantial payments have been made to Defendant NBK well after March 6, 2021:

- a) \$801,509.42 paid by Galleria 2425 Owner, LLC to Defendant NBK on August 27, 2022;
- b) \$80,000 paid by Galleria 2425 Owner, LLC to Defendant NBK on April 18, 2023;
- c) \$80,000 paid by Galleria 2425 Owner, LLC to Defendant NBK on May 10, 2023.

This is almost One Million Dollars (\$1,000,000) that not only does NBK not give credit to Galleria 2425 Owner, LLC for having made the payments, but again, it vilifies it, saying exactly the opposite that no payments (zero) have been made since March 6, 2021.

34. After NBK's disclosures of the situation created by the Confidential Settlement and the wrongful posting for foreclosure during an extension of that agreement, potential buyers of the property who would otherwise become good prospects to negotiate a sale with **Galleria 2425 Owner, LLC**, became potential purchasers of the NBK Note and began negotiating with NBK. NBK interfered with these potential purchases and with these business relationships. At least the following were interfered with in this fashion:

- a) Globix Investment,
- b) Ironwood Commercial Realty,
- c) Shah Firm, LLC, and

d) Jeb Brown Law.

**B. Azeemeh Zaheer Decides She Wants the Building.**

35. On June 26, 2023, Defendant Zaheer filed a lawsuit in the name of Naissance Galleria, LLC (“*Naissance*”), which she purported to control, in the 157<sup>th</sup> Judicial District Court in Harris County, Texas referenced by case number 2023-39006 against Brad Parker (“*Parker*”) as an initial step in Zaheer pursuit of a hostile takeover of the 2425 Building.

36. On July 5, 2023, Defendant Zaheer and also in the name of Naissance, filed a second lawsuit in the 129<sup>th</sup> Judicial District Court in Harris County, Texas referenced by case number 2023-41091 against Parker and NBK at the request of Zaheer, to further the defendants’ hostile takeover attempt of the 2425 Building. Zaheer sought injunctive relief, but that request for an emergency temporary restraining order was denied.

37. On or about July 5, 2023, Galleria 2425 Owner, LLC commenced a Chapter 11 bankruptcy proceeding in the Southern District of Texas, referenced by case number 23-60036. NBK sought to dismiss the bankruptcy proceeding, but its motion to dismiss was denied on September 26, 2023. The Chapter 11 Plan should have been approved and would have substantially reduced the value of Bank of Kuwait’s secured debt, which Bank of Kuwait decided it would not allow, just as it had decided not to allow the prior sales of the building that had been lined up by Galleria 2425 Owner, LLC.

**C. Azeemeh Zaheer is a False Representative of Naissance.**

38. Azeemeh Zaheer at one time had a business relationship with Ali Choudhri, both of which appeared to have ended mutually for a time. Azeemeh Zaheer filed an Application for Temporary Injunction in the 80th Judicial District Court for Harris County against Naissance

Galleria, LLC, which was a mezzanine lender to an LLC (“**LLC**”) two steps up in the building’s ownership chain.

39. Azeemeh Zaheer had signed, as the authorized representative of the Managing Member of Naissance Galleria, LLC an Assignment of the management rights of that LLC to Ali Choudhri. In response, Mr. Choudhri stepped into Naissance’s shoes, covered its expenses, and did a miraculous job of negotiating the aforementioned settlement with Bank of Kuwait after the Assignment. Azeemeh Zaheer made this assignment for a number of reasons, but most of them stemmed from her ineffective management of the building and her fear of exposure to Bank of Kuwait and certain individuals affiliated with the Bank of Kuwait because of her poor performance.

40. After Mr. Choudhri received the Assignment and had negotiated the successful settlement with Bank of Kuwait and the building looked as if it might succeed (a period of years), Azeemeh Zaheer decided she wanted to misappropriate the value that Mr. Choudhri had just preserved and to an extent had just created. First, she claimed the Assignment was invalid and sought and received a Temporary Injunction on September 21, 2023 from the 80th Judicial District Court in Harris County. This Temporary Injunction basically only created a stalemate with respect to the management of Naissance Galleria, LLC to preserve the status quo until a trial in January. Mr. Choudhri is still the manager of Naissance Galleria, LLC, not Azeemeh Zaheer, although she did have some approval rights under the injunction. Mr. Choudhri, as the manager of Naissance Galleria LLC, is only required to obtain approval from Zaheer for his actions. Zaheer DOES NOT have any control of the entity. Moreover, this was confirmed at a hearing on November 13, 2023 before Judge Manor in the 80<sup>th</sup> Judicial District Court.

**D. Azeemeh Decides to Conspire with Bank of Kuwait So It Could Foreclose On the Building.**

41. After the September 21, 2023 entry of the Temporary Injunction, some ironic, if not strange, events start taking place with respect to Ms. Zaheer and the Galleria 2425 Owner, LLC. First, it is against Azeemeh Zaheer and Naissance's financial interests if the Bank of Kuwait forecloses.

42. Second, on information and belief, Zaheer caused a copy of the Temporary Injunction Entered on September 21, 2023 by the 80th Judicial District Court in Harris County to be sent to counsel for the Bank of Kuwait, who in turn immediately wrote a letter to Judge Lopez, the Bankruptcy Judge in charge of Galleria 2425 Owner, LLC's Bankruptcy, and the Judge who has approval authority over Galleria 2425 Owner, LLC's Plan. (Not exactly helpful in getting a Plan of Reorganization approved.)

43. Third, Zaheer's attorneys (Mr. Tang and Mr. Drinnon) show up without any forewarning at the October 12, 2023 status conference in the Bankruptcy Court about the plan, claiming Azeemeh Zaheer now is the manager of Naissance Galleria, LLC and they have been hired by her to represent Naissance Galleria, LLC, all by virtue of the Temporary Injunction.

44. They again made pleas to the court regarding Zaheer's desire to take over the 2425 Building, stating the Temporary Injunction gave them sole authority to represent Naissance, and Naissance did not want to sue the Bank of Kuwait for breach of the Settlement Agreement as it had already done under Mr. Choudhri's rightful management.

**E. Zaheer Changes Sides to Make a Deal with the Bank of Kuwait and Extort Money from Mr. Choudhri.**

45. Progressively, Azeemeh Zaheer's behavior becomes more inexplicable as she instructs her attorneys to: (1) take the position that the Temporary Injunction put her in charge of Naissance (it did not);<sup>1</sup> (2) that Naissance Galleria, LLC could or had already become the owner of Galleria 2425 Owner, LLC) and as the new owner, they might want to take the bankruptcy in another direction.

46. **The only explanation for Zaheer's extraordinary behavior, which appears self-destructive, is Zaheer sees the opportunity to make a deal with the Bank of Kuwait or extort Mr. Choudhri, who will lose millions of dollars of equity in the building if a foreclosure takes place.**

47. This created an environment of confusion for the Bankruptcy Court, which was by Defendants' design, and it was a concerted effort by the Defendants to have the bankruptcy case dismissed, allowing the Bank of Kuwait to foreclose. Defendant NBK would not be impeded by the bankruptcy and Zaheer could tell Mr. Choudhri, "I will not go along with your reorganization plan unless you pay me millions of dollars" while making a deal with the Bank of Kuwait to block the Plan of Reorganization in the event no payment was received from Mr. Choudhri.

48. The Defendants are working in concert, to achieve the same end. Specifically, the Defendants have devised, and intended to devise, a scheme or artifice to seize the 2425 Building

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<sup>1</sup> At a hearing had in the issuing court (the 80th Judicial District Court) on Monday, November 13, 2023, the Court confirmed her Temporary Injunction Order had not turned control of Naissance over to Zaheer and Zaheer had no authority to authorize attorneys to make the filing and take the action they had on behalf of Naissance Galleria, LLC in the Bankruptcy.

by any means necessary. Defendants will stop at nothing to see the Plaintiff lose any interest it has in the 2425 Building

49. Defendants' scheme has involved false representations of material information, including but not limited to misrepresentations concerning the Plaintiff and the purpose and effects of the Temporary Injunction.

**F. False Representations by Zaheer's Agents are Successful in Getting Galleria 2425 Owner LLC's Bankruptcy Dismissed.**

50. The Bankruptcy Court scheduled a Status Conference for Galleria 2425 Owner, LLC's Bankruptcy Case for November 1, 2023. Azeemeh's agents, on October 31, 2023, only hours before the Status Conference, filed an Emergency Motion. This Motion contained many misrepresentations, some of which follow:

- a) Even though Zaheer had no right to or standing necessary to file anything on behalf of Naissance, and the Temporary Injunction gave Zaheer no such rights, statements were made in their Emergency Motion directly to the contrary, stating Azeemeh Zaheer was in, Choudhri was out.
- b) The filing stated flatly at one point that the Assignment had been found to be forged – it had not.
- c) The filing stated that, because of the Temporary Injunction, Naissance was now controlled exclusively by Zaheer, who could make Naissance become the Owner of the Bankrupt. (The issuing court on Monday, November 13, 2023, ruled from the bench it said no such thing.)

These misrepresentations had the desired effect, and the Bankruptcy Court dismissed the Bankruptcy, green-lighting the Bank of Kuwait to foreclose.

**G. Abdullatif is Choudhri's Competitor and Wants to Ruin Him.**

51. Choudhri has been in the real estate investment and management business for the last 20 years. The regular course of Choudhri's business involves numerous aspects of real estate development. These activities include real estate and business acquisitions and dispositions,

seeking and obtaining financing, and developing and managing commercial and residential properties. He regularly raises capital for these activities through the issuance of equity and/or debt. It is also within his normal course of business to enter into transactions with borrowers, lenders, and investors to support the purchase, development, and operations of real estate properties.

52. Choudhri at times conducts his real estate investment and management business through the use of special purpose entities, such as Plaintiff Galleria Owner 2425, LLC. Choudhri runs a management company, Jetall Companies, Inc. (“*Jetall*”), to provide employees and management services to entities for purposes of operating real estate investments.

53. Abdullatif has provided financing for numerous third-party claims against Choudhri, including interfering with Choudhri’s final divorce proceedings in both Pakistan Supreme Court and Harris County District Court by soliciting Choudhri’s ex-wife for her legal claims against Choudhri and/or his entities and to gain access to Choudhri’s protected financial disclosures.

54. Upon information and belief, Abdullatif is also financing the litigation expenses of Zaheer against Choudhri in the dispute over the building owned by Plaintiff. Zaheer has agreed to the enterprise course of action aimed at destroying Choudhri’s business, and either taking possession of the 2425 Building or extorting money from him to agree to a plan of reorganization.

55. On more than one occasion, Abdullatif resorted to violence and threats against Choudhri and/or his family, friends, and associates. Mr. Choudhri had another real estate venture involving an entity called Dalio. Abdullatif was present at Dalio’s foreclosure proceeding, where a friend accompanying him assaulted one of Choudhri’s lawyers. On another occasion, Abdullatif and his associates used firearms to hold Choudhri and his associates hostage.

56. Abdullatif also formed an association with others in his illegal efforts to destroy Choudhri's business. These individuals include but are not limited to Chris Wyatt, former Chief Operating Officer of Jetall ("**Wyatt**").

57. Wyatt was hired by Jetall in 2019. In the course of his employment, Wyatt oversaw legal and litigation matters for Jetall. He was provided confidential information concerning Jetall's and its client's real estate transactions, finances and debt leverage on properties, and litigation management strategies. As a Jetall representative, Wyatt was regularly involved in and provided access to privileged information and communications, including information subject to attorney-client and work product privileges. Wyatt signed a non-disclosure agreement at the beginning of his employment prohibiting him from disclosing confidential information and requiring him to return all files upon his termination.

58. Wyatt's employment at Jetall ended in December 2020. When he left Jetall, Wyatt stole corporate files including electronic communications and secretly recorded privileged phone communications between Choudhri and his attorneys.

59. Jetall obtained a restraining order in January 2021 enjoining Wyatt from disclosing or divulging confidential information obtained through his course of employment with Jetall.

60. Abdullatif met with Wyatt immediately following Wyatt's departure from Jetall. Abdullatif, directly and through his lawyers, received confidential and privileged information from Wyatt. This information included but is not limited to illegal recordings of Choudhri's conversations with attorneys.

61. Upon information and belief, Abdullatif and his agents were aware that Wyatt was a former employee of Jetall who was involved in confidential and privileged communications and that a restraining order was entered enjoining Wyatt from disclosing confidential information.



62. Abdullatif and his agents have used the illegally obtained information and recordings as part of Abdullatif's scheme to destroy Choudhri's business. Abdullatif retained Wayne Dolcefino ("**Dolcefino**") as a "consultant" to publish on the internet a series of hit pieces on Choudhri. Dolcefino advertises that his services included "litigation support," and Abdullatif has utilized Dolcefino in the course of his numerous lawsuits asserted against Choudhri and his businesses.

63. Information illegally obtained from Wyatt is included in many of Dolcefino's hit pieces. Dolcefino continues to publish these hit pieces on the internet, including videos posted in May 2023.

64. Abdullatif, with the assistance of Drinnon, now representing Azeemeh Zaheer, has made several false claims against his competitor, Choudhri, in many ways, two of the most egregious being:

- a) Hiring Dolcefino to create video "hit pieces" about Choudhri, his business, his marital status, and inappropriate character based upon his actions during that marital status. This video contained "over the top" falsehoods, e.g. that he was still married and had been for years. It was commercial speech designed to designate a competitor (Choudhri) and give Abdullatif a competitive advantage, and was introduced into interstate commerce by release to major television (broadcast and cable) networks and by placing on the internet where it still resides today, making it available to the potential customers and lenders that are competed for; and
- b) Placing multiple improper Lis Pendens on the record title to properties owned by Choudhri or his business entities, which created a double negative effect on Choudhri's ability to conduct business by hampering his ability to find new lenders or renewing existing loans because the security for them was impaired and making it impossible to sell those properties to raise new capital on his own. These Lis Pendens were "over the top" misrepresentations because they were illegal and did not assert valid interests in the subject properties. The Lis Pendens were also introduced into interstate commerce because they were filed of record and were available "online" over the internet to any potential customer for commercial real estate in the Houston area.

**V.**  
**CAUSES OF ACTION**

**COUNT 1: BREACHES OF CONFIDENTIAL SETTLEMENT AGREEMENT**

65. Plaintiff repeats and realleges the allegations set forth in all preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

66. Plaintiff and Defendant reached a valid and enforceable agreement expressly set forth in the Confidential Settlement Agreement. Pursuant to the Confidential Settlement Agreement, Defendant agreed to keep the contents and terms of the parties' agreement completely confidential.

67. Defendant breached the Confidential Settlement Agreement by disclosing its contents and terms to third parties in violation of the agreement's express confidentiality provisions. These disclosures prevented the sale of the 2425 Building and chilled the market for other buyers.. The same is true for NBK's wrongful, early filing of a notice of foreclosure on the 2425 Building, also in violation of the Confidential Settlement Agreement.

68. Plaintiff hereby sues NBK for these breaches of the Confidential Settlement Agreement. The damages for these breaches are the amounts of money that the Plaintiff would have made from the contemplated transaction

**COUNT 2: TORTIOUS INTERFERENCE WITH CONTRACT**

69. Plaintiff repeats and realleges the allegations set forth in all preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

70. As alleged, NBK tortiously interfered with the SIBS International contract and the Caldwell Soames Inc. contract, causing damages to the Plaintiff, but for NBK's interference, would have been paid to the Plaintiff.

71. Zaheer, tortiously interfered with Plaintiff's contract with NBK, and with Plaintiff's bankruptcy proceeding.

### **COUNT 3: TORTIOUS INTERFERENCE WITH BUSINESS RELATIONS**

72. Plaintiff repeats and realleges the allegations set forth in all preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

73. After NBK's disclosures of the situation created by the confidential settlement and the wrongful posting for foreclosure during a judicial extension of the grace period contained in that agreement, potential buyers of the property who would otherwise have become good prospects to negotiate a sale with Galleria 2425 Owner, LLC became instead potential purchasers from NBK of the NBK note and began contacting and negotiating or attempting to negotiate with NBK instead of Galleria 2425 Owner, LLC NBK interfered with these potential purchasers and with these potential business relationships. At least the following were interfered with in this fashion:

- a) Globix Investment,
- b) Ironwood Commercial Realty,
- c) Shah Firm, LLC, and
- d) Jeb Brown Law.

74. Zaheer, has interfered with the Plaintiff's relationship with NBK

75. This interference by the Zaheer damaged Plaintiff in amounts to be determined after discovery

**COUNT 4: FRAUD AND FRAUDULENT INDUCEMENT**

76. Plaintiff repeats and realleges the allegations set forth in all preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

77. NBK never had any intention of living up to the Confidential Settlement Agreement. The Galleria 2425 Owner, LLC was winning the lawsuit against NBK, so NBK induced the Plaintiff into entering into the Confidential Settlement Agreement which NBK had no intention of living up to. This fraud works as an estoppel against NBK. Plaintiff hereby sues NBK for fraud and fraudulent inducement

78. NBK knew at the time it entered into the Confidential Settlement Agreement it would deflect and tortiously interfere with the Galleria 2425 Owner, LLC's attempts to sell the 2425 Building so NBK would be able to foreclose on the building and take all of the value instead of just the value of the amounts otherwise owed at the time. The fraud, fraud in the inducement, and subsequent interference for all of which Plaintiff hereby sues NBK.

**COUNT 5: BUSINESS DISPARAGEMENT**

79. Plaintiff repeats and realleges the allegations set forth in all preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

80. The posting of the 2425 Building during any negotiation periods and/or the extended grace period when actual buyers were moving toward concluding a deal and when other potential buyers were expressing interest in the 2425 Building, constituted business disparagement against the Plaintiff for which Plaintiff hereby sues NBK.

81. The efforts of Zaheer to make false accusations and representations about the Plaintiff's ownership interests, management, and decision making abilities constituted business disparagement against the Plaintiff for which the Plaintiff hereby sues Zaheer,

82. The business disparagement by the Defendants damaged Plaintiff in amounts to be determined after discovery.

**COUNT 6: UNJUST ENRICHMENT**

83. Plaintiff repeats and realleges the allegations set forth in all preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

84. If NBK is allowed to foreclose on the 2425 Building it will make an unconscionable profit and succeed in its “loan to own” gambit. The amount of its unjust enrichment for which Plaintiff hereby sues NBK is the difference between what NBK would have been owed (but for its breaches of the Confidential Settlement Agreement) under the Confidential Settlement Agreement and the true value of the building, for which Plaintiff hereby sue NBK.

**COUNT 7: CONSPIRACY**

85. Defendants Zaheer, in combination with NBK, agreed to work in concert with each other in order to interfere with Plaintiff's bankruptcy case, and to have it dismissed by making fraudulently claiming they had control over Naissance Galleria, LLC.

86. Defendants Zaheer, and NBK acted with the intent to harm plaintiff.

87. To accomplish the object of their agreement Zaheer, and NBK intentionally or negligently mischaracterized the effect of the state court temporary injunction, in order to confuse and disrupt Plaintiff's bankruptcy case, which resulted in dismissal.

88. The agreement to engage in this conduct proximately caused injury to plaintiff. Plaintiff's interests in Galleria 2425 Owner, LLC's sole asset, instead of being protected through a bankruptcy action, has now been posted for foreclosure on December 5<sup>th</sup>, 2023, which will irreparably harm Plaintiff.

**COUNT 8: ATTORNEYS' FEES**

89. Plaintiff repeats and realleges the allegations set forth in all preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

90. Plaintiff hereby sue Defendants for its reasonable and necessary attorneys' fees under breach of contract and under any statutory or common law right to recover same.

**VI.  
APPLICATION FOR TEMPORARY INJUNCTION OR ORDER**

91. The Defendants have conspired with each other and others, or worked in parallel courses to get the bankruptcy of Plaintiff 2425 Galleria Owner, LLC dismissed so that Bank of Kuwait is not prohibited by the automatic stay from foreclosing. If a foreclosure takes place, the equity of Plaintiff will be wiped out and Plaintiff will have no assets and no adequate remedy at law to return the retrieve the assets or its value.

92. Temporary injunctive relief is necessary until such time as the merits of this case can be decided and the status quo is maintained pending resolution on the merits.

**APPLICATION FOR TEMPORARY RESTRAINING ORDER**

93. Plaintiff's application for a temporary restraining order is authorized by Tex. Civ. Prac. & Rem. Code §65.011(1) which allows applicants to the relief sought to restrain the Defendants from prejudicial acts; by Tex. Civ. Prac. & Rem. Code §65.011(3) which allows applicants to the relief sought under the principles of equity and laws of Texas related to injunctions; by Tex. Civ. Prac. & Rem. Code § 65.011(5) which allows applicants to the relief sought when irreparable injury to business, good will, reputation and personal property is threatened; and by Tex. Bus. Orgs. Code § 152.211(b), allowing partners in a partnership to obtain an injunction to enforce rights under the Texas Business Organizations Code.

94. As set forth above, an emergency hearing on Plaintiff's Application for Temporary Restraining Order is necessary to conserve the Plaintiff's business status and maintain the status quo during the pendency of this lawsuit. Plaintiff would suffer material injury by the delay necessary to give notice. Any delay necessary for notice would lead to imminent and irreparable injury to property.

95. It is probable that Plaintiff will recover from Defendants after a trial on the merits because the facts set forth are verified and sets forth the Defendants wrongful conduct; and actions including seeking the sale of the business by the Defendants are wrongful and must be stopped.

96. If Plaintiff's application is not granted, harm is imminent because 1) Galleria 2425 Owner, LLC's sole asset will be foreclosed as a result of Defendants harmful actions on December 5<sup>th</sup>, 2023; 2) Defendants will continue to conspire with each other in a manner that is counter to the true interests of Naissance Galleria, LLC; and 3) Defendants will continue to violate the Temporary Injunction, as they have already done on at least three occasions, in order to interfere with Plaintiff's lawful attempts to preserve the 2425 Building. These harms are imminent and would cause irreparable injury with no other adequate legal remedy.

97. The harm that will result if the temporary restraining order is not issued is irreparable because Plaintiff has an interest in a unique piece of real estate which it will be wiped out in the event of foreclosure. Texas Courts repeatedly rule that "every piece of **real estate** is innately **unique**. See, e.g., *Greater Houston Bank v. Conte*, 641 S.W.2d 407, 410 (Tex. App.--Houston [14th [\*58] Dist.] 1982, no writ) ("It is well established law that each and every piece of **real estate** is unique. Therefore, if appellants were allowed to foreclose appellees would be irreparably harmed, since **real estate** is so unique."); *El Paso Dev. Co. v. Berryman*, 729 S.W.2d 883, 888 (Tex. App.--Corpus Christi 1987, no writ) ("Every piece of **real estate** is unique,

and if foreclosure were allowed before a full determination of the usury claim, appellee would be irreparably harmed."). *Kotz v. Imperial Capital Bank*, 319 S.W.3d 54, 57-58 (Tex. App.—San Antonio 2010, no pet.).

## **VII. JURY DEMAND**

98. Plaintiff demands a jury trial and tenders the appropriate fee with this petition.

## **VIII. PRAYER**

99. For the reasons set forth above, Plaintiff asks that the Court enter a Temporary Restraining Order, and after a hearing, a Temporary Injunction, enjoining the Defendants in the following manners:

- a) NBK is restrained from 1) Foreclosing on, posting, reposting, or otherwise selling at auction the 2425 Building; and 2) transferring any Note and/or lien it holds or may hold relating to the 2425 Building; or 3) or interfering with the Plaintiff's business in any manner, including by acting in concert with another party.
- b) Actual damages including economic injuries & consequential damages;
- c) Attorney's fees;
- d) Exemplary damages;
- e) Prejudgment and post judgment interest;
- f) Court costs; and
- g) All other relief to which Plaintiff is entitled under both law and equity.



100. Plaintiff is willing to post bond.

Respectfully submitted,

**MATÍAS J. ADROGUÉ PLLC**

By: \_\_\_\_\_

Matías J. Adrogué

Texas State Bar No. 24012192

Leila M. El-Hakam

Texas State Bar No. 24007147

1629 West Alabama St.

Houston, Texas 77006

713-425-7270 Telephone

713-425-7271 Facsimile

[service@mjalawyer.com](mailto:service@mjalawyer.com)

**ATTORNEYS FOR PLAINTIFF**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing has been served to all counsel of record by hand delivery, fax transmittal, Certified mail, return receipt requested, electronic mail, e-service, and/or U.S. Mail, on this the 29<sup>th</sup> day of November, 2023.

\_\_\_\_\_  
Matías J. Adrogué

JURAT

My name is Ali Choudhri, my date of birth is 01/24/1980. My office address is 1001 West Loop South, Suite 700, Houston, Texas 77027. I declare under penalty of perjury that the facts and events set forth in the foregoing Amended Petition and Emergency Application for Temporary Restraining Order are within my personal knowledge and are true and correct.

Executed in Harris County, State of Texas, on November 29, 2023.

/s/Ali Choudhri

Ali Choudhri

Unofficial Copy Office of Marilyn Burgess District Clerk

**Automated Certificate of eService**

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Matias Adroque

Bar No. 24012192

mja@mjalawyer.com

Envelope ID: 82040972

Filing Code Description: Amended Filing

Filing Description: Plaintiff's Second Amended Petition & Application for TRO

Status as of 11/29/2023 10:18 AM CST

**Case Contacts**

Name	BarNumber	Email	TimestampSubmitted	Status
Jerry CAlexander		alexanderj@passmanjones.com	11/29/2023 10:01:12 AM	SENT
Ruth NVera		verar@passmanjones.com	11/29/2023 10:01:12 AM	SENT
Sheryl Chandler		chandlers@passmanjones.com	11/29/2023 10:01:12 AM	SENT
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David Tang	24014483	dtangattorney@gmail.com	11/29/2023 10:01:12 AM	SENT
MacGeorge Law Firm Admin		service@jlm-law.com	11/29/2023 10:01:12 AM	SENT

## **EXHIBIT 2**

CAUSE NO. \_\_\_\_\_

NAISSANCE GALLERIA, LLC,	§	IN THE HARRIS COUNTY COURT
PLAINTIFF	§	
	§	
VS.	§	_____ JUDICIAL DISTRICT COURT
	§	
NATIONAL BANK OF KUWAIT,	§	
S.A.K.P, New York Branch, et al.	§	
DEFENDANTS.	§	HARRIS COUNTY, TEXAS

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**PLAINTIFF’S ORIGINAL AND REQUEST FOR TEMPORARY RESTRAINING  
ORDER**

---

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff NAISSANCE GALLERIA, LLC files this its Plaintiff’s Original Petition and Temporary Restraining Order against Defendants NATIONAL BANK OF KUWAIT, S.A.K.P, New York Branch and BRAD PARKER, a/k/a BRADLEY PARKER and would respectfully show the following:

**I.  
DISCOVERY LEVEL**

Plaintiff pleads that discovery should be conducted in accordance with a discovery control plan Level 2 under Rule 190 of the Texas Rules of Civil Procedure.

**II.  
PARTIES**

Plaintiff NAISSANCE GALLERIA, LLC (“Plaintiff”, “NAISSANCE”, or “MEZZ” herein) is a Corporation doing business in Harris County, Houston, Texas.

Defendant BRAD PARKER, a/k/a BRADLEY PARKER (“PARKER” or “Defendant” is an individual residing in Harris County, Houston, Texas and may be personally served with process and this petition at 2127 Bolsover St., Houston, Texas 77005, or wherever he may be found. **Issuance of citation is requested at this time.**

Defendant National Bank of Kuwait, S.A.K.P., New York Branch (“NBK”) is a banking corporation organized under the laws of Kuwait, acting through its New York Branch. Defendant has not designated a registered agent for service of process in the State of Texas. As such, pursuant to Texas Civil Practice and Remedies Code §17.041-045, the Texas Secretary of State is Defendant's agent for service of process in this proceeding, which arises out of business Defendant has done in this state, and Defendant may be served through the Texas Secretary of State. **Issuance of citation is requested at this time**

### **III. JURISDICTION AND VENUE**

Venue is mandatory in Harris County, Texas pursuant to Texas Civil Practice & Remedies Code § 15.020 because the agreement that forms the basis of this lawsuit constitutes a "major transaction," is in writing, and the parties thereto agreed that a suit arising from the agreement will be brought in Harris County, Texas. Venue is additionally proper in Harris County, Texas pursuant to Texas Civil Practice

& Remedies Code § 15.0115 because the Defendants transacted business in and around Harris County, Texas; the real estate which forms the basis of the claims asserted by Plaintiff is located in Harris County, Texas; and the agreement which forms the basis of this suit was executed and performable in Harris County, Texas.

### **III. FACTS/CAUSES OF ACTION**

Defendant NBK is the primary lender, loaning \$51,675,000.00 to Galleria 2425 Owner, LLC (“Galleria Owner”) secured by a deed of trust on real property and improvements located at 2425 West Loop South, Houston, Texas 77027.

Plaintiff NAISSANCE is the secondary lender, loaning \$16,100,000.00 (“Mezz Loan”) to Galleria 2425 JV, LLC (“Galleria JV”), secured by a pledge from and a first priority perfected security interest in all of Galleria JV’s ownership interests in Galleria Owner, and further evidenced and secured by the documents and instruments set forth on Exhibit B attached hereto.

Co-Defendant Brad Parker also entered into a personal guaranty agreement (Exhibit C) in Plaintiff’s favor for the full amount of the Mezz Loan.

Plaintiff and Defendant NBK then entered into an Intercreditor Agreement (Ex. D) which spelled out each respective party’s position and obligations as it relates to the financing and potential default of the subject transaction.

Galleria Owner has defaulted the loan agreement with Defendant NBK and is seeking to, among other remedies, foreclose the real property and improvements located

at 2425 West Loop South, Houston, Texas 77027 on July 5, 2023 at 10:00 a.m. (Exhibit A).

Under the Intercreditor Agreement, Defendant NBK was required to give notice of Galleria Owner's default under the senior note because Plaintiff has certain rights such as purchasing the note. Defendant agreed to send notice to Plaintiff as follows:

**Section 16. Notices. All notices, demands and requests required to be given hereunder shall be in writing and shall be given as follows: (a) by hand delivery; (b) by overnight nationwide commercial courier service; or (c) by telecopy transmission (other than for notices of default) with a confirmation copy to be delivered by duplicate notice in accordance with any of clause (a) or (b) above, in each case, to the party intended to receive the same at the following address(es):**

To Mezzanine Lender:

Naissance Galleria, LLC  
c/o Walkers Corporate Limited  
Cayman Corporate Centre, 27 Hospital Road  
George Town, Grand Cayman KY1-9008

Cayman Islands Galleria 2425 JV LLC

With a copy to:

Polsinelli  
2950 N Harwood Street, Suite 2100  
Dallas TX 75201

Attention: Brian Bullard, Esq.  
Tel: 214.397.0030

(Ex. D). Defendant NBK has not served any notice to Plaintiff NAISSANCE on Galleria Owner's default and subsequent Notice of Foreclosure for July 5, 2023.



More importantly, once the property is foreclosed, Plaintiff's right to purchase the senior loan is terminated as follows:

The right of Mezzanine Lender to purchase the Senior Loan shall automatically terminate (i) upon a transfer of the Premises by foreclosure sale, sale by power of sale or delivery of a deed in lieu of foreclosure or (ii) if a Purchase Option Event ceases to exist.

(Ex. D).

Consequently, Plaintiff will lose its right to purchase the loan and the equitable interest in real property and improvements located at 2425 West Loop South, Houston, Texas 77027. As a matter of law, Plaintiff faces irreparable harm if it loses the opportunity to acquire an interest in the real property.

Co-Defendant Brad Parker has defaulted on his personal guaranty agreement with Plaintiff. Likewise, Galleria JV has defaulted on the loan agreement with Plaintiff NAISSANCE. Plaintiff provided Galleria JV notice of its default, for which it has failed to cure and has subsequently failed to pay off the principal amount by the maturity date of May 23, 2023.

Thus, Plaintiff NAISSANCE has exercised its remedies under the Pledge Agreement including but not limited to:

8. Rights of Lender.

(a) If an Event of Default (as defined in the Loan Agreement) shall occur, Lender shall have the right to receive any and all income, cash dividends, distributions, proceeds or other property received or paid in respect of the Pledged Securities and make application thereof to the Debt, in such order as Lender, in its sole discretion, may elect, in accordance with the Loan Documents. If an Event of Default shall occur, then all such Pledged Securities at Lender's option, shall be registered in the name of Lender or its nominee (if not already so registered), and Lender or its nominee may thereafter exercise (i) all voting, all regular membership and other rights pertaining to the Pledged Securities and (ii) any and all rights of conversion, exchange, and subscription and any other rights, privileges or options pertaining to such Pledged Securities as if it were the absolute owner thereof (including, without limitation, the right to exchange at its discretion any and all of the Pledged Securities upon the merger, consolidation, reorganization, recapitalization or other fundamental change in the organizational structure of Mortgage Borrower or upon the exercise by Pledgor or Lender of any right, privilege or option pertaining to such Pledged Securities, and in connection therewith, the right to deposit and deliver any and all of the Pledged Securities with any committee, depository, transfer agent, registrar or other designated agency upon such terms and conditions as it may determine), all without liability except to account for property actually received by it, but Lender shall have no duty to exercise any such right, privilege or option and shall not be responsible for any failure to do so or delay in so doing.

(Section 8, Ex. B).

Essentially, Plaintiff is now the absolute owner of Galleria Owner through Galleria JV's 100% membership interest in Galleria Owner. Plaintiff can now also negotiate and assert any of its rights with Defendant NBK as the absolute owner of Galleria 2425 Owner, LLC.

Defendant Parker's Guaranty to Plaintiff is an irrevocable, absolute, continuing guaranty of payment and performance and not a guaranty of collection.

Prior to suit, Plaintiff provided Defendant Parker with notice of events of default. These defaults were not cured and Plaintiff hereby seeks relief under Defendant Parker's guarantee.

All conditions precedent have occurred.

Plaintiff and performed under the agreement and would not have made the loan without Defendant unconditionally guaranteeing the performance and payment to Plaintiff of the guaranteed obligations.

Defendants have breached the contract by failing to perform. Defendant Parker's conduct caused injury to Plaintiff, which resulted in actual and consequential damages within the jurisdictional limits of this Court.

### **ATTORNEY'S FEES AND COST**

As a result of the facts described above, Plaintiff has found it necessary to engage a licensed attorney in the investigation and prosecution of this action. Plaintiff is entitled to recover reasonable and necessary attorney's fees incurred in the prosecution of this action, and for such relief, Plaintiff seeks a recovery for the amount proven at trial. Plaintiff is also entitled to recover from Defendant all reasonable and necessary attorney's fees incurred in appealing to the court of appeals, if necessary, and incurred in appealing to the Texas Supreme Court, if necessary.

## **V.**

### **APPLICATION FOR TEMPORARY RESTRAINING ORDER AND TEMPORARY INJUNCTION**

#### **A. TEMPORARY RESTRAINING ORDER**

All allegations are incorporated herein.

The Plaintiff is entitled to Temporary Restraining Order to restrain further transfer, or any other disposition of the property, or taking possession or exercising any control over the property as follows:

- a. Plaintiff will suffer significant irreparable injury and loss. The threatened damage which would be incurred would be significant and substantial as specified in the previous paragraphs and incorporated herein by reference.
- b. There is a substantial likelihood of success on the merits as specified since Defendant NBK has failed to give notice of the foreclosure as required by the Intercreditor Agreement.
- c. The threatened harm outweighs the harm and temporary restraining order would inflict on the Defendant.

Plaintiff is willing to post a bond in the amount the court deems appropriate.

For these reasons, Plaintiff asks the court to issue a temporary restraining order preventing Defendant NBK, its attorneys, agents, successors and/or assigns from foreclosing on the real property located at 2425 West Loop South, Houston, Texas 77027.

Plaintiff's declaration affidavit that proves the allegations in this petition and Application for Temporary and Injunctive Relief attached and incorporated by reference as Plaintiff's Exhibit 1.

Unless Defendant NBK is restrained from the act complained of herein, Plaintiff will suffer irreparable harm, for which Plaintiff has no adequate remedy at law.

A trial court may enter temporary restraining orders with or without notice and hearing when the movant is threatened with immediate and irreparable harm. Tex. R. Civ. P. 680. A temporary restraining order serves to provide emergency relief and to preserve the *status quo* until a hearing may be had on a temporary injunction. *Ex parte*

*Pierce*, 161 Tex. 524, 342 S.W.2d 424, 426 (1961) (holding temporary restraining order may be granted without notice to the adverse party if it appears from facts shown by affidavit or verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and a hearing held).

It is essential that the Court act immediately, prior to notice on Defendant NBK and a hearing on the matter, because Defendant NBK has failed to give proper notice of the July 5, 2023 foreclosure.

In addition, a temporary restraining order is necessary to preserve the status quo until Plaintiff's claims are decided by a trial on the merits. *Smith v. Vial*, 555 S.W.2d 215, 216 (Tex. App.—Dallas 1977, no writ); *Branham v. Short*, 526 S.W.2d 639, 641 (Tex. App.—Fort Worth 1975, no writ). If Defendant NBK's conduct goes unrestrained, Plaintiff may lose the equitable rights in the subject real property.

Plaintiff is seeking a TRO and then a subsequent injunction because it will suffer a probable injury is one that is imminent, irreparable, and has no adequate remedy at law. *Harbor Perfusion, Inc. v. Floyd*, 45 S.W.3d 713, 716 (Tex.App.-Corpus Christi 2001, no pet.); *Tenet Health Ltd. v. Zamora*, 13 S.W.3d 464, 468 (Tex.App.-Corpus Christi 2000, pet. dismiss'd w.o.j.). Every piece of real estate is unique, and foreclosure can be an irreparable injury for which there is no adequate remedy at law. *El Paso Dev. Co. v. Berryman*, 729 S.W.2d 883, 888 (Tex.App.-Corpus Christi 1987, no writ).

Plaintiff is therefore entitled to a temporary restraining order, enjoining **DEFENDANT NATIONAL BANK OF KUWAIT, S.A.K.P, New York Branch** from

foreclosing its lien on real property and improvements located at 2425 West Loop South, Houston, Texas 77027.

### **REQUEST FOR ORAL HEARING**

Plaintiff asks the Court to set their application for temporary injunction, and after hearing the application, issue same against Defendants.

### **VII.** **PRAYER**

For these reasons set forth above, unless Defendant **NATIONAL BANK OF KUWAIT, S.A.K.P, New York Branch** is enjoined from following through the July 5, 2023 foreclosure, Plaintiff will suffer irreparable injury for which there is no adequate remedy at law. Therefore, Plaintiff asks that the Court:

1. Issue a Temporary Restraining Order without a hearing and notice to restraining Defendant **NATIONAL BANK OF KUWAIT, S.A.K.P, New York Branch**, its agents, attorneys, or employees from foreclosing its interest in 2425 West Loop South, Houston, Texas 77027;
2. Issue a Temporary Injunction, after notice to Defendant NBK and a hearing, enjoining Defendant NBK, from the acts listed above;
3. Upon a trial on the merits, Plaintiff prays that they be entitled to judgment:
  - a. Against Defendants for actual, compensatory, consequential damages;
  - b. Pre-judgment and post-judgment interest at the rate allowed by law until paid;
  - c. Reasonable and necessary attorney's fees and all costs of court and expenses incurred by Plaintiff (including expert fees) in the investigation and prosecution of this case; and

- d. Such further relief at law or in equity, to which Plaintiff may by this pleading or proper amendment, thereto, show herself justly entitled.

Respectfully submitted,

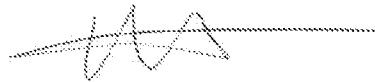
**LAW OFFICES OF OMAR KHAWAJA, PLLC**

5177 Richmond Ave., Suite 1065  
Houston, Texas 77056  
(281) 888-2339 (phone)  
(281) 888-2421 (fax)

/s/  
OMAR KHAWAJA  
State Bar No.: 24072181

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**E-Service Address:**  
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(832) 287-2129  
[dtangattorney@gmail.com](mailto:dtangattorney@gmail.com)

**ATTORNEYS FOR PLAINTIFF NAISSANCE  
GALLERIA, LLC**

## **EXHIBIT 3**



Cause No. 202341091

TRPOX

NAISSANCE GALLERIA LLC

vs.

NATIONAL BANK OF KUWAIT S A K

\*  
\*  
\*  
\*  
\*

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

129th JUDICIAL DISTRICT

**TRIAL PREPARATION ORDER**

- ☒ **Pursuant to Rule 166** of the Texas Rule of Civil Procedure, before the Pretrial Conference scheduled for this case, the items that are checked below **must be furnished to opposing counsel in advance** with enough time to allow review for objections, and **brought with you** to the Pretrial Conference.
- ☒ **Pursuant to Rule 166** of the Texas Rule of Civil Procedure, the items that are checked below must be **FILED BEFORE OR** by **11-11-2024**.
- ☒ **Pursuant to Rule 166** of the Texas Rule of Civil Procedure, the items that are checked must be completed and ready for discussion with the court at the Pretrial Conference.
- \* \* \* \* \*
- ☒ **Party/Attorney List.** Names, addresses, and phone numbers of each pro se party and attorney.
- ☒ **Trial Witness List.** The name, address, and telephone number of any person expected to testify at trial, and a brief statement of each identified person's connection with the case.
- ☒ **Draft Jury Charge** (if a jury fee has been paid) or Findings of Fact and Conclusions of Law. Modifications may be submitted as the trial progresses.
- ☒ **Exhibits.** An exhibit list is required. All exhibits must be pre-marked with inadmissible matters readacted (e.g. insurance). Objections to authenticity must be made pursuant to Rule 193.7.
- ☒ **Deposition Excerpts or Edited Videotapes.** Designate page and line in sequence to be used at trial.
- ☒ **Motions in Limine.**
- ☒ **Trial Scheduling.** Estimated trial length, and potential attorney or witness conflicts or travel difficulties.
- ☒ **Other.**

TRIAL: 11.18.24 RULE 166(G) MOTIONS. MOTIONS TO EXCLUDE

EXHIBITS/WITNESSES. DRAFT FINAL JUDGMENTS. MOTION FOR TRIAL CONTINUANCE

SHOULD BE FILED ASAP OR NO LATER THAN ONE WEEK BEFORE DOCKET CALL. FAILURE  
TO OBEY MAY RESULT IN SANCTIONS.

Signed

BRADLEY PARKER

MICHAEL GOMEZ  
JUDGE, 129TH DISTRICT COURT  
DATE GENERATED : 8/27/2024

Cause No. 202341091

TRPOX

NAISSANCE GALLERIA LLC

vs.

NATIONAL BANK OF KUWAIT S A K

\*  
\*  
\*  
\*  
\*

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

129th JUDICIAL DISTRICT

**TRIAL PREPARATION ORDER**

- ☒ **Pursuant to Rule 166** of the Texas Rule of Civil Procedure, before the Pretrial Conference scheduled for this case, the items that are checked below **must be furnished to opposing counsel in advance** with enough time to allow review for objections, and **brought with you** to the Pretrial Conference.
- ☒ **Pursuant to Rule 166** of the Texas Rule of Civil Procedure, the items that are checked below must be **FILED BEFORE OR** by **11-11-2024**.
- ☒ **Pursuant to Rule 166** of the Texas Rule of Civil Procedure, the items that are checked must be completed and ready for discussion with the court at the Pretrial Conference.
- \* \* \* \* \*
- ☒ **Party/Attorney List.** Names, addresses, and phone numbers of each pro se party and attorney.
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- ☒ **Other.**

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EXHIBITS/WITNESSES. DRAFT FINAL JUDGMENTS. MOTION FOR TRIAL CONTINUANCE

SHOULD BE FILED ASAP OR NO LATER THAN ONE WEEK BEFORE DOCKET CALL. FAILURE TO OBEY MAY RESULT IN SANCTIONS.

Signed

BRAD (A/K/A PARKER, BRADLEY)  
PARKER  
2127 BOLSOVER ST  
HOUSTON, TX 77005

MICHAEL GOMEZ  
JUDGE, 129TH DISTRICT COURT  
DATE GENERATED : 8/27/2024

Cause No. 202341091

TRPOX

NAISSANCE GALLERIA LLC

vs.

NATIONAL BANK OF KUWAIT S A K

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\*  
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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

129th JUDICIAL DISTRICT

**TRIAL PREPARATION ORDER**

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TRIAL: 11.18.24 RULE 166(G) MOTIONS. MOTIONS TO EXCLUDE

EXHIBITS/WITNESSES. DRAFT FINAL JUDGMENTS. MOTION FOR TRIAL CONTINUANCE

SHOULD BE FILED ASAP OR NO LATER THAN ONE WEEK BEFORE DOCKET CALL. FAILURE  
TO OBEY MAY RESULT IN SANCTIONS.

Signed

DAVID TANG  
6711 STELLA LINK #343  
HOUSTON, TX 77005

MICHAEL GOMEZ  
JUDGE, 129TH DISTRICT COURT  
DATE GENERATED : 8/27/2024

24014483

000063JCV001

Cause No. 202341091

TRPOX

NAISSANCE GALLERIA LLC

vs.

NATIONAL BANK OF KUWAIT S A K

\*  
\*  
\*  
\*  
\*

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

129th JUDICIAL DISTRICT

**TRIAL PREPARATION ORDER**

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- ☒ **Motions in Limine.**
- ☒ **Trial Scheduling.** Estimated trial length, and potential attorney or witness conflicts or travel difficulties.
- ☒ **Other.**

TRIAL: 11.18.24 RULE 166(G) MOTIONS. MOTIONS TO EXCLUDE

EXHIBITS/WITNESSES. DRAFT FINAL JUDGMENTS. MOTION FOR TRIAL CONTINUANCE

SHOULD BE FILED ASAP OR NO LATER THAN ONE WEEK BEFORE DOCKET CALL. FAILURE  
TO OBEY MAY RESULT IN SANCTIONS.

Signed

CHARLES CLAYTON CONRAD  
909 FANNIN ST., SUITE 2000  
HOUSTON, TX 77010MICHAEL GOMEZ  
JUDGE, 129TH DISTRICT COURT  
DATE GENERATED : 8/27/2024

24040721

000064JCV001

## **EXHIBIT 4**

**U.S. Bankruptcy Court  
Southern District of Texas (Victoria)  
Adversary Proceeding #: 23-06009**

*Assigned to:* Bankruptcy Judge Christopher M. Lopez

*Date Filed:* 09/19/23

*Lead BK Case:* [23-60036](#)

*Lead BK Title:* Galleria 2425 Owner LLC

*Lead BK Chapter:* 11

*Demand:*

*Nature[s] of Suit:* 02 Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)

***Plaintiff***

**Galleria 2425 Owner, LLC**

c/o Melissa S. Hayward

Hayward PLLC

10501 N. Central Expy., Ste. 106

Dallas, TX 75231

represented by **James Q. Pope**

The Pope Law Firm

6161 Savoy Drive

Ste 1125

Houston, TX 77036

713-449-4481

Email: [ecf@thepopelawfirm.com](mailto:ecf@thepopelawfirm.com)

**LEAD ATTORNEY**

***Plaintiff***

**Naissance Galleria LLC**

represented by **James Q. Pope**

(See above for address)

**LEAD ATTORNEY**

***Plaintiff***

**Ali Choudhri**

1001 W. Loop South

Suite 700

Houston, TX 77027

represented by **James Q. Pope**

(See above for address)

**LEAD ATTORNEY**

V.

***Defendant***

**National Bank of Kuwait, S.A.K.P., New York Branch**

represented by **National Bank of Kuwait,  
S.A.K.P., New York Branch  
PRO SE**

Filing Date	#	Docket Text
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000066

09/19/2023	<a href="#">1</a> (40 pgs; 4 docs)	Adversary case 23-06009. Nature of Suit: (02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) Complaint by Galleria 2425 Owner, LLC, Naissance Galleria LLC, Ali Choudhri against National Bank of Kuwait, S.A.K.P., New York Branch. Fee Amount \$350 (Attachments: # <a href="#">1</a> Adversary Cover Sheet # <a href="#">2</a> Exhibit A # <a href="#">3</a> Exhibit B) (Hayward, Melissa) (Entered: 09/19/2023)
09/19/2023		Receipt of Complaint( <a href="#">23-06009</a> ) [cmp,cmp] ( 350.00) Filing Fee. Receipt number A24739952. Fee amount \$ 350.00. (U.S. Treasury) (Entered: 09/19/2023)
10/09/2023	<a href="#">2</a> (2 pgs)	Request for Issuance of Summons on National Bank of Kuwait, S.A.K.P., New York Branch. (Hayward, Melissa) (Entered: 10/09/2023)
10/13/2023	<a href="#">3</a> (2 pgs)	Summons Issued on National Bank of Kuwait, S.A.K.P., New York Branch Date Issued 10/13/2023. (RebeccaBecknal) (Entered: 10/13/2023)

PACER Service Center			
Transaction Receipt			
10/01/2024 17:29:35			
<b>PACER Login:</b>	pwsp0438	<b>Client Code:</b>	054391-0000008-19105
<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	23-06009 Fil or Ent: filed Doc From: 0 Doc To: 99999999 Term: included Format: html Page counts for documents: included
<b>Billable Pages:</b>	1	<b>Cost:</b>	0.10

## **EXHIBIT 5**



UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

In re ) CASE NO: 23-34815 (JPN)  
)  
GALLERIA 2425 Owner, LLC, ) Houston, Texas  
)  
Debtor. ) Wednesday, June 19, 2024  
)  
) 9:00 a.m. to 4:54 p.m.  
-----)

TRIAL

BEFORE THE HONORABLE JEFFREY P. NORMAN  
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For Debtor: REESE W. BAKER, ESQ.  
Baker & Associates  
950 Echo Lane, Suite 300  
Houston, TX 77024

For 2425 WL, LLC: H. GRAY BURKS, IV, ESQ.  
BurksBaker, PLLC  
950 Echo Lane, Suite 300  
Houston, TX 77024

STEPHEN SATHER, ESQ.  
Barron & Newburger, P.C.  
7320 North Mopac Expressway  
Suite 400  
Austin, TX 78731

For Ali Choudhri,  
pro se: ALI CHOUDHRI  
2425 West Loop South, 11th Floor  
Houston, TX 77027

For the Trustee: R.J. SHANNON, ESQ.  
Shannon & Lee LLP  
2100 Travis Street, Suite 1525  
Houston, TX 77002

For National Bank of ANDREW M. TROOP, ESQ.

1 Kuwait, S.A.K.P., New PATRICK E. FITZMAURICE, ESQ.  
York Branch: Pillsbury Winthrop Shaw Pittman  
2 31 West 52nd Street  
New York, NY 10019-6131  
3 CHARLES C. CONRAD, ESQ.  
Pillsbury Winthrop Shaw Pittman  
4 Two Houston Center  
909 Fannin, Suite 2000  
5 Houston, TX 77010-1028

6 Court Reporter: TRACEY CONRAD

7 Transcribed by: Veritext Legal Solutions  
330 Old Country Road, Suite 300  
8 Mineola, NY 11501  
Tel: 800-727-6396  
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25 Proceedings recorded by electronic sound recording;  
Transcript produced by transcription service.

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1 MR. FITZMAURICE: Okay. You can take this one  
2 down. Thank you.

3 BY MR. FITZMAURICE:

4 Q Mr. Murray, are you aware of whether or not the debtor  
5 has asserted claims against the National Bank of Kuwait?

6 A Yes.

7 Q In the course of your duties in this case as the  
8 Chapter 11 trustee, have you investigated those claims?

9 A Yes.

10 MR. FITZMAURICE: I'm just going to grab a  
11 document from the table if that's okay.

12 THE COURT: That's fine. Feel free.

13 MR. FITZMAURICE: Always at the bottom of the  
14 pile.

15 BY MR. FITZMAURICE:

16 Q So Mr. Murray, I'd like to discuss with you the things  
17 that you did to investigate the debtor's claims against the  
18 bank. Did you discuss the nature of those claims with the  
19 debtor's counsel?

20 A Yes.

21 Q Now the debtor has more than one counsel. Is there --  
22 can you let us know who you spoke to?

23 A At different points I spoke to Mr. Baker, I spoke to  
24 Mr. Choudhri personally, spoke to Ms. Hayward, spoke with  
25 Mr. Alexander. At some point I think we spoke, but Mr.

1 MR. BURKS: Based only his view of the settlement  
2 agreement?

3 THE COURT: I overruled the objection, Mr. Burks.  
4 You don't get to reargue the objection. Please sit down.  
5 Thank you. Go ahead. You can answer the question.

6 BY MR. FITZMAURICE:

7 Q Do you recall the question?

8 A I think it was what my -- ask again.

9 Q Yes. After -- as a result of the investigation that  
10 you performed in connection with reviewing the estate's  
11 claims against the bank, did you form a view as to the  
12 enforceability of the settlement agreement?

13 A Yes.

14 Q And what was that view?

15 A That it was likely enforceable.

16 Q In conducting your investigation, were you looking for  
17 factual support for the concept that the settlement  
18 agreement could be rescinded?

19 A Yes.

20 Q Did you find any?

21 A No.

22 Q Are you aware that Mr. Choudhri and the debtor assert  
23 claims against the bank that relate to events that occurred  
24 after August 22nd of 2022?

25 A Yes.

1 Q And I'll just represent to you that's the date of the  
2 settlement agreement. We can look at it, but the document's  
3 in evidence. Did they provide you any factual support for  
4 those claims?

5 A They told me what their allegations were, yes.

6 Q Did they provide you with any documentary evidence in  
7 support of those claims?

8 A No.

9 Q Did you form a view as to the factual support for those  
10 claims?

11 A Yes.

12 Q What was that?

13 A That it was weak to non-existent.

14 Q In connection with your investigation into the estate's  
15 claims against the National Bank of Kuwait, did you form a  
16 view as to the voracity of Mr. Choudhri?

17 A Yes.

18 Q What was that?

19 A I did not think I could rely on the voracity of things  
20 Mr. Choudhri told me.

21 Q Have you read the plan that NBK has filed in this case?

22 A Yes.

23 Q Do you understand that the plan reflects a compromise  
24 or settlement of estate claims against the bank?

25 A Yes.

1 But quite clearly, this is a case that is now over 18 months  
2 old, and I agree that it is a case that needs to come to a  
3 conclusion one way or the other.

4 I am hopeful, Mr. Murray, that I will get some  
5 findings of fact and conclusions of law and an order either  
6 confirming the plan or not to you by the time that you have  
7 your auction. That's the goal. All right.

8 It's just been a really, really bad week. I mean,  
9 I will say that I'm not typically as busy as I've been this  
10 week. I have a huge panel tomorrow that's 61 pages. I  
11 contested confirmation hearings in the afternoon. And I  
12 have a Galveston docket on Friday. So I will work as I can  
13 and as I'm allowed to given what limited time I have, but I  
14 promise you that I'll get something to you that you can look  
15 at, agree with, disagree, and appeal as you feel necessary.

16 All right. Thank you. We're adjourned today.

17 CLERK: All rise.

18 (Whereupon these proceedings were concluded at  
19 4:54 PM)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing transcript is a true and accurate record of the proceedings.

A handwritten signature in cursive script that reads "Sonya M. Ledanski Hyde". The signature is written in dark ink and is positioned to the right of the line number 6.

Sonya Ledanski Hyde

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

Date June 25, 2024



## **EXHIBIT 6**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

<b>IN RE:</b>  <b>GALLERIA 2425 OWNER, LLC</b>  <b>Debtor.</b>	§ § § § §	<b>Case No. 23-34815 (JPN)</b>  <b>Chapter 11</b>
--	-----------------------	---

---

**ORDER GRANTING EMERGENCY MOTION TO  
ENFORCE THE GATE-KEEPING PROVISIONS OF THE  
CONFIRMED CHAPTER 11 PLAN**

---

CAME ON FOR CONSIDERATION the Emergency Motion to Enforce the Gate-Keeping Provisions of the Confirmed Chapter 11 Plan (“Motion”) filed by National Bank of Kuwait, S.A.K.P., New York Branch (“NBK”). In the Motion, NBK seeks an order staying the pending actions identified below because, among other things, the plaintiffs in those actions are required obtain an order from this Court that the claims they have asserted against NBK are colorable non-estate claims. They have not done so. Having considered the Motion, any responses related thereto, the record of the chapter 11 case, and all other evidence before it, and after due deliberation, the Court **ORDERS** that

1. The following actions (the “Pending Actions”) are stayed pending further order of this Court:
  - *Naissance Galleria, LLC v. Zaheer, et al*, Cause No. 2023-43755 pending in the District Court of Harris County, Texas, 80th Judicial District.
  - *Naissance Galleria, LLC v. NBK*, Cause No. 2023-41091 pending in the District Court of Harris County, Texas, 129th Judicial District.
  - *Galleria 2425, LLC, Naissance Galleria, LLC and Choudhri v. NBK*, Adversary Case No. 23-06009 pending in the U.S. Bankruptcy Court for the Southern District of Texas, Victoria Division.

- Adversary Case No. 23-03263 in which Ali Choudhri's Second Amended Petition in Intervention remains pending.
2. The plaintiffs in the Pending Actions, Debtor, Naissance Galleria, LLC, and Ali Choudhri shall file any written response to the Motion on or before October 11, 2024, showing cause why the claims asserted in their respective Pending Actions are colorable, non-estate claims.
  3. Any written reply to a filed response shall be due on or before October 17, 2024.
  4. The Motion shall be heard on October \_\_\_, 2024 at \_\_\_\_\_ a.m./p.m. in Courtroom \_\_\_, United States Court House, 515 Rusk St., Houston, Texas.
  5. NBK shall serve a copy of this order on the Plaintiffs and their counsel of record, in the Pending Actions within two business day of the entry of this Order.
  6. NBK shall file a copy of this Order in each of the Pending Actions within two business days of the entry of this Order.

Signed: \_\_\_\_\_, 2024.

---

Honorable Jeffrey P. Norman  
United States Bankruptcy Judge

Submitted by:

**PILLSBURY WINTHROP SHAW PITTMAN LLP**

/s/ Charles C. Conrad

Charles C. Conrad  
Texas State Bar No. 24040721  
Ryan Steinbrunner  
Texas State Bar No. 24093201  
609 Main Street Suite 2000  
Houston, TX 77002  
Telephone: (713) 276-7600  
Facsimile: (713) 276-7634  
charles.conrad@pillsburylaw.com  
ryan.steinbrunner@pillsburylaw.com

- and -

Andrew M. Troop (Bar No. MA547179)  
Patrick E. Fitzmaurice\*  
Kwame O. Akuffo\*  
31 West 52nd Street  
New York, NY 10019-6131  
Telephone: (212) 858-1000  
Facsimile: (212) 858-1500  
andrew.troop@pillsburylaw.com  
patrick.fitzmaurice@pillsburylaw.com  
kwame.akuffo@pillsburylaw.com

\*Admitted *pro hac vice*

***Counsel for National Bank of Kuwait, S.A.K.P., New York Branch***

**IN RE GALLERIA 2425 OWNER, LLC, CASE NO. 23-34815**  
**SERVICE LIST (a/o July 2, 2024)**

**Debtor:**

Galleria 2425 Owner, LLC  
1001 West Loop South Ste 700  
Houston, TX 77027

**Debtor's Counsel:**

Reese W. Baker  
Baker & Associates  
950 Echo Lane Ste 300  
Houston, TX 77024

James Q. Pope  
The Pope Law Firm  
616 Savoy Drive Ste 1125  
Houston, TX 77036

**U.S. Trustee:**

Office of United States Trustee  
Attn: Jana Smith Whitworth  
515 Rusk Street Suite 3516  
Houston, TX 77002

**Chapter 11 Trustee:**

Christopher R. Murray  
602 Sawyer Street Ste 400  
Houston, TX 77007

**Chapter 11 Trustee's Counsel:**

R. J. Shannon  
Shannon & Lee LLP  
2100 Travis Street Ste 1525  
Houston, TX 77002

**Governmental Entities:**

Harris County Tax Assessor  
P O Box 4622  
Houston, TX 77210

Harris County, et al.  
P O Box 2928  
Houston, TX 77252-2928

**Twenty Largest Creditors:**

Caz Creek Lending  
118 Vintage Park Blvd No. W  
Houston, TX 77070

Cirro Electric  
P O Box 60004  
Dallas, TX 75266

City of Houston  
P O Box 1560  
Houston, TX 77251-1560

City of Houston Water Department  
P O Box 1560  
Houston, TX 77251-1560

Datawatch Systems  
Suite 200  
4520 East West Highway  
Bethesda, MD 20814

Firetron  
10101A Stafford Centre Dr.  
Stafford, TX 77477

First Insurance Funding  
450 Skokie Blvd  
Northbrook, IL 60062

Gulfstream Legal Group  
1300 Texas Street  
Houston, TX 77002

*(Returned to Sender / Unable to Forward)*

Gulfstream Legal Group  
720 N Post Oak Rd Ste 355  
Houston, TX 77024

Hayward PLLC  
10501 N Central Expy Ste 106  
Dallas, TX 75231-2203

HNB Construction, LLC  
521 Woodhaven  
Ingleside, TX 78362

Houston Community College System  
c/o Tara Grundemeier  
Linebarger, Grogan, Blair & Sampson  
P O Box 3064  
Houston, TX 77253-3064

Houston Independent School District  
P O Box 4668  
Houston, TX 77210  
*(Returned to Sender / Unable to Forward)*

Lexitas  
P O Box 734298 Dept 2012  
Dallas, TX 75373

Nationwide Security  
2425 W Loop South Ste 300  
Houston, TX 77027  
*(Returned to Sender / Unable to Forward)*

Nichamoff Law Firm  
2444 Times Blvd Ste 270  
Houston, TX 77005

T&R Mechanical  
21710 White Oak Drive  
Conroe, TX 77306-8848  
*(Returned to Sender / Unable to Forward)*

TKE  
3100 Interstate North Cir SE 500  
Atlanta, GA 30339

Zindler Cleaning Service Co.  
2450 Fondren Ste 113  
Houston, TX 77063

**Other Creditors / Interest Holders:**

2425 WL, LLC  
60 West 2nd Street  
Freeport, NY 11746

ADT  
P O Box 382109  
Pittsburgh, PA 15251

Ali Choudhri  
1001 West Loop South 700  
Houston, TX 77027

Ash Automated Control Systems, LLC  
P O Box 1113  
Fulshear, TX 77441

CFI Mechanical, Inc.  
6109 Brittmoore Rd  
Houston, TX 77041

CNA Insurance Company  
P O Box 74007619  
Chicago, IL 60674

Comcast  
P O Box 60533  
City of Industry, CA 91716

Environmental Coalition Inc.  
P O Box 1568  
Stafford, TX 77497

Ferguson Facilities Supplies  
P O Box 200184  
San Antonio, TX 78220

Jetall Companies Inc.  
2425 West Loop South Ste 1100  
Houston, TX 77027-4210

Kings 111 Emergency Communications  
751 Canyon Drive Suite 100  
Coppell, TX 75019

Logix Fiber Networks  
P O Box 734120  
Dallas, TX 75373

Mueller Water Treatment  
1500 Sherwood Forest Dr  
Houston, TX 77043

Smart Office Solutions  
6623 Theall Road  
Houston, TX 77066-1213  
(Returned to Sender / Unable to Forward)

Waste Management  
P O Box 660345  
Dallas, TX 75266

Metwall Design Solutions LLC  
10931 Day Road  
Houston, TX 77043-4901

US Retailers LLC d/b/a Cirro Energy  
Attn: Bankruptcy Department  
P O Box 3606  
Houston, TX 77253-3606

Naissance Galleria, LLC  
c/o Law Office of Nima Taherian  
701 N Post Oak Rd Ste 216  
Houston, TX 77024

H.N.B. Construction, LLC  
c/o Malcolm D. Dishongh  
P O Box 2347  
Humble, TX 77347-2347

CC2 TX, LLC  
14800 Landmark Blvd Ste 400  
Dallas, TX 75254

MacGeorge Law Firm  
2921 E 17th St Bldg D Ste 6  
Austin, TX 78702  
(Returned to Sender / Unable to Forward)

MacGeorge Law Firm  
701 Tillery Street Ste 12  
Austin, TX 78702

**Executory Contract Counterparties:**

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Solutions LLC  
2425 West Loop South Ste 800  
Houston, TX 77027-4214  
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2425 WL, LLC  
13498 Pond Springs Rd  
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700 Lavaca Street Ste 1401  
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Boho Lounge  
2425 West Loop South Ste 100  
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CNA Insurance Company  
P O Box 74007619  
Chicago, IL 60674

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2425 West Loop South Ste 340b  
Houston, TX 77027-4205

First Insurance Funding  
450 Skokie Blvd  
Northbrook, IL 60062

G3 Global Services LLC  
2425 West Loop South Ste 310  
Houston, TX 77027-4208

Galloworks  
2425 West Loop South Ste 400  
Houston, TX 77027-4205

Jetall Companies Inc.  
2425 West Loop South Ste 1100  
Houston, TX 77027-4210

Kudrath Enterprises PLLC  
2425 West Loop South Ste 350  
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Nationwide Investigations & Security Inc.  
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Houston, TX 77027-4207  
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Shah Sloan LLC  
2425 West Loop South Ste 501, 503 and 523  
Houston, TX 77027-4205  
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2425 West Loop South Ste 900  
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SIBS International Inc.  
2425 West Loop South Ste 350  
Houston, TX 77027  
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2425 West Loop South, Rooftop  
Houston, TX 77027-4205  
*(Returned to Sender / Unable to Forward)*

St. Christopher Holdings GP LLC  
2425 West Loop South Ste 700  
Houston, TX 77027-4205

UL Therapy  
2425 West Loop South Ste 315  
Houston, TX 77027-4211  
*(Returned to Sender / Unable to Forward)*

Uptown Cosmetic and Implant Dentistry  
2425 West Loop South Ste 333  
Houston, TX 77027-4211

**Parties Requesting Notice:**

Jeannie Lee Andressen  
Tara Grundemeier  
Linebarger Goggan Blair & Sampson LLP  
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*Counsel for City of Houston, Houston  
Community College System, and Houston  
ISD*

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*Counsel for Rodney Drinnon*

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*Counsel for Harris County, Attn: Property  
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Broocks Wilson  
Kean Miller LLP  
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Ali Choudhri  
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Houston, TX 77027

David Tang  
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West University Place, TX 77005  
*Counsel for Azeemeh Zaheer*

Omar Khawaja  
5177 Richmond Ave Ste 1065  
Houston, TX 77056  
*Counsel for Azeemeh Zaheer*

**ENTERED**

October 02, 2024

Nathan Ochsner, Clerk

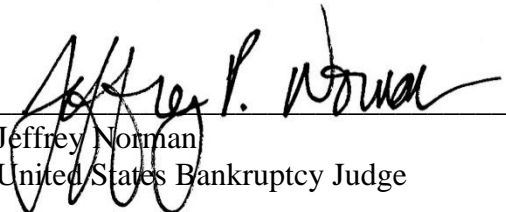
**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION****IN RE:****GALLERIA 2425 OWNER, LLC,****Debtor.**§  
§  
§  
§  
§  
§  
§**CASE NO: 23-34815****CHAPTER 11****ORDER SETTING HEARING**

Hearing is set on the Emergency Motion to Enforce the Gate-Keeping Provisions of the Confirmed Chapter 11 Plan (ECF No. 758) at 1:30 p.m. on October 10, 2024, in Courtroom 403, United States Courthouse, 515 Rusk St., Houston, Texas. The response deadline is 5:00 p.m. on October 9, 2024. Requested relief that is unopposed by written response prior to the response deadline may be ruled on without the necessity of a hearing. The Court may grant or deny any relief sought in any motion/application or objection without hearing based on responsive pleadings. The movant shall serve a copy of this order on all affected parties within 24 hours and file a certificate of service; **or** file and serve a hearing notice within 24 hours, which must include the response deadline.

**Parties should reference the Court's website for in person hearing requirements and connection instructions for virtual appearances.<sup>1</sup>**

**SO ORDERED.**

SIGNED 10/02/2024


  
\_\_\_\_\_  
Jeffrey P. Norman  
United States Bankruptcy Judge

---

<sup>1</sup> <https://www.txs.uscourts.gov/page/united-states-bankruptcy-judge-jeffrey-p-norman>

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

<b>In re:</b>  <b>GALLERIA 2425 Owner, LLC</b>  <b>Debtor.</b>	§ § § § §	<b>Case No. 23-34815 (JPN)</b>  <b>Chapter 11</b>
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**SUPPLEMENT TO NATIONAL BANK OF KUWAIT, S.A.K.P, NEW YORK  
BRANCH’S EMERGENCY MOTION TO ENFORCE THE GATE-KEEPING  
PROVISIONS OF THE CONFIRMED CHAPTER 11 PLAN  
Related to ECF Nos. 758, 759 and 760**

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**TO THE HONORABLE JEFFREY P. NORMAN, U.S. BANKRUPTCY JUDGE:**

National Bank of Kuwait, S.A.K.P., New York Branch (“NBK”) files this supplement to its Emergency Motion to Enforce the gate-keeping provisions in the confirmed and unstayed chapter 11 plan [*see* ECF No. 758] (the “Motion”) to advise the Court that one of the lawsuits identified in the Motion was nonsuited earlier today on October 8, 2024, and so relief with respect to that lawsuit no longer appears required as requested in the Motion.

1. NBK filed the Motion on October 2, 2024 seeking two forms of relief in aid of enforcing and implementing the gate-keeping provisions of the confirmed plan of reorganization for the Debtor [*see* ECF No. 566] (the “Plan”): (a) a stay of the four actions identified in paragraph 7 of the Motion; and (b) entry of an order compelling the plaintiffs or proposed plaintiff-intervenor in those actions to comply with the gate-keeping provisions in the confirmed Plan by demonstrating that the claims asserted are colorable, non-estate claims against NBK.

2. One of the identified actions in the Motion is *Naissance Galleria, LLC v. NBK*, Cause No. 2023-41091 pending the District Court of Harris County, Texas, 129<sup>th</sup> Judicial District (“Naissance II”).

3. Earlier today, the Naissance II plaintiff filed the *Plaintiff's Motion for Nonsuit* attached as Exhibit A, stating that “Naissance Galleria, LLC wishes to nonsuit its claims against Defendant NATIONAL BANK OF KUWAIT, S.A.K.P., New York Branch and respectfully requests [the Harris County District Court] to dismiss same.” Based on the *Plaintiff's Motion for Nonsuit*, it appears that no relief is required for Naissance II in respect of the Motion.

4. NBK has filed this supplement to advise the Court and other interested parties of developing facts in advance of the hearing on the Motion scheduled for Thursday, October 10, 2024 at 1:30 p.m. (prevailing Central Time).

DATED: October 8, 2024

**PILLSBURY WINTHROP SHAW PITTMAN LLP**

/s/ Andrew M. Troop

Charles C. Conrad  
Texas State Bar No. 24040721  
Ryan Steinbrunner  
Texas State Bar No. 24093201  
609 Main Street Suite 2000  
Houston, TX 77002  
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Facsimile: (713) 276-7634  
charles.conrad@pillsburylaw.com  
ryan.steinbrunner@pillsburylaw.com

- and -

Andrew M. Troop (Bar No. MA547179)  
Patrick E. Fitzmaurice (admitted *pro hac vice*)  
Kwame O. Akuffo (admitted *pro hac vice*)  
31 West 52nd Street  
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patrick.fitzmaurice@pillsburylaw.com  
kwame.akuffo@pillsburylaw.com

***Counsel for National Bank of Kuwait, S.A.K.P., New York Branch***

**CERTIFICATE OF SERVICE**

The undersigned certifies that on October 8, 2024, a true and correct copy of this document was served via the Court's CM/ECF system to all parties who are deemed to have consented to ECF electronic service, via email and/or U.S. first class mail, postage paid to all counsel in the Pending Actions and listed below, and also by mailing, first class, postage prepaid, to each of the parties on the attached service list.

Matías J. Adrogué  
Leila M. El-Hakam  
Matías J. Adrogué PLLC  
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Houston, TX 77006  
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*Counsel for Plaintiff in Naissance I*

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*Counsel for Plaintiff in Naissance I*

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[rdrinnon@mccathernlaw.com](mailto:rdrinnon@mccathernlaw.com)  
*Counsel for Defendant Azeemeh Zaheer in Naissance I*

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[dtangattorney@gmail.com](mailto:dtangattorney@gmail.com)  
*Counsel for Defendant Azeemeh Zaheer in Naissance I*

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*Counsel for Plaintiff in Naissance II*

Bradley Parker  
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Houston, TX 77005  
*Defendant in Naissance II*

Melissa S. Hayward  
Hayward PLLC  
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Dallas, TX 75231  
[mhayward@haywardfirm.com](mailto:mhayward@haywardfirm.com)  
*Counsel for Plaintiffs in Galleria I*

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6161 Savoy Drive Ste 1125  
Houston, TX 77036  
[jamesp@thepopelawfirm.com](mailto:jamesp@thepopelawfirm.com)  
*Counsel for Plaintiffs in Galleria I*

/s/ Andrew M. Troop  
Andrew M. Troop

## **EXHIBIT A**

**CAUSE NO. 2023-41091**

<b>NAISSANCE GALLERIA, LLC,</b>	<b>§</b>	<b>IN THE HARRIS COUNTY COURT</b>
<b>PLAINTIFF</b>	<b>§</b>	
	<b>§</b>	
<b>VS.</b>	<b>§</b>	<b>129<sup>th</sup> JUDICIAL DISTRICT COURT</b>
	<b>§</b>	
<b>NATIONAL BANK OF KUWAIT,</b>	<b>§</b>	
<b>S.A.K.P, New York Branch, et al.</b>	<b>§</b>	
<b>DEFENDANTS.</b>	<b>§</b>	<b>HARRIS COUNTY, TEXAS</b>

## PLAINTIFF'S MOTION FOR NONSUIT

Plaintiff NAISSANCE GALLERIA, LLC files this its motion for nonsuit and would respectfully show the Court as follows:

Naissance Galleria, LLC wishes to nonsuit its claims against Defendant NATIONAL BANK OF KUWAIT, S.A.K.P, New York Branch and respectfully requests this Court to dismiss same<sup>1</sup>.

Respectfully submitted,

**LAW OFFICES OF OMAR KHAWAJA, PLLC**

5177 Richmond Ave., Suite 1065  
Houston, Texas 77056  
(281) 888-2339 (phone)  
(281) 888-2421 (fax)

/s/

OMAR KHAWAJA  
State Bar No.: 24072181

<sup>1</sup> A plaintiff's nonsuit is effective immediately upon filing. *See Travelers Ins. Co. v. Joachim*, 315 S.W.3d 860, 862-63 (Tex. 2010).

Email: [omar@attorneyomar.com](mailto:omar@attorneyomar.com)

**E-Service Address:**  
[service@attorneyomar.com](mailto:service@attorneyomar.com)



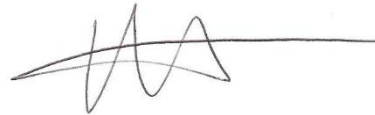
---

**David Tang**  
**State Bar No. 24014483**  
6711 Stella Link, #343  
West University Pl., Texas 77005  
(832) 287-2129  
[dtangattorney@gmail.com](mailto:dtangattorney@gmail.com)

**ATTORNEYS FOR PLAINTIFF NAISSANCE  
GALLERIA, LLC**

**CERTIFICATE OF SERVICE**

I hereby certify a true and correct copy of the foregoing was served via  
electronic means on this the 8<sup>th</sup> day of October 2024.



---

**David Tang**



**IN RE GALLERIA 2425 OWNER, LLC, CASE NO. 23-34815  
SERVICE LIST (a/o October 7, 2024)**

**Debtor:**

Galleria 2425 Owner, LLC  
1001 West Loop South Ste 700  
Houston, TX 77027

**Debtor's Counsel:**

Reese W. Baker  
Baker & Associates  
950 Echo Lane Ste 300  
Houston, TX 77024

James Q. Pope  
The Pope Law Firm  
616 Savoy Drive Ste 1125  
Houston, TX 77036

**U.S. Trustee:**

Office of United States Trustee  
Attn: Jana Smith Whitworth  
515 Rusk Street Suite 3516  
Houston, TX 77002

**Chapter 11 Trustee:**

Christopher R. Murray  
602 Sawyer Street Ste 400  
Houston, TX 77007

**Chapter 11 Trustee's Counsel:**

R. J. Shannon  
Shannon & Lee LLP  
2100 Travis Street Ste 1525  
Houston, TX 77002

**Governmental Entities:**

Harris County Tax Assessor  
P O Box 4622  
Houston, TX 77210

Harris County, et al.  
P O Box 2928  
Houston, TX 77252-2928

**Twenty Largest Creditors:**

Caz Creek Lending  
118 Vintage Park Blvd No. W  
Houston, TX 77070

Cirro Electric  
P O Box 60004  
Dallas, TX 75266

City of Houston  
P O Box 1560  
Houston, TX 77251-1560

City of Houston Water Department  
P O Box 1560  
Houston, TX 77251-1560

Datawatch Systems  
Suite 200  
4520 East West Highway  
Bethesda, MD 20814

Firetron  
10101A Stafford Centre Dr.  
Stafford, TX 77477

First Insurance Funding  
450 Skokie Blvd  
Northbrook, IL 60062

Gulfstream Legal Group  
1300 Texas Street  
Houston, TX 77002

*(Returned to Sender / Unable to Forward)*

Gulfstream Legal Group  
720 N Post Oak Rd Ste 355  
Houston, TX 77024

Hayward PLLC  
10501 N Central Expy Ste 106  
Dallas, TX 75231-2203

HNB Construction, LLC  
521 Woodhaven  
Ingleside, TX 78362

Houston Community College System  
c/o Tara Grundemeier  
Linebarger, Grogan, Blair & Sampson  
P O Box 3064  
Houston, TX 77253-3064

Houston Independent School District  
P O Box 4668  
Houston, TX 77210  
*(Returned to Sender / Unable to Forward)*

Lexitas  
P O Box 734298 Dept 2012  
Dallas, TX 75373

Nationwide Security  
2425 W Loop South Ste 300  
Houston, TX 77027  
*(Returned to Sender / Unable to Forward)*

Nichamoff Law Firm  
2444 Times Blvd Ste 270  
Houston, TX 77005

T&R Mechanical  
21710 White Oak Drive  
Conroe, TX 77306-8848  
*(Returned to Sender / Unable to Forward)*

TKE  
3100 Interstate North Cir SE 500  
Atlanta, GA 30339

Zindler Cleaning Service Co.  
2450 Fondren Ste 113  
Houston, TX 77063

**Other Creditors / Interest Holders:**

2425 WL, LLC  
60 West 2nd Street  
Freeport, NY 11746

ADT  
P O Box 382109  
Pittsburgh, PA 15251

Ali Choudhri  
1001 West Loop South 700  
Houston, TX 77027

Ash Automated Control Systems, LLC  
P O Box 1113  
Fulshear, TX 77441

CFI Mechanical, Inc.  
6109 Brittmoore Rd  
Houston, TX 77041

CNA Insurance Company  
P O Box 74007619  
Chicago, IL 60674

Comcast  
P O Box 60533  
City of Industry, CA 91716

Environmental Coalition Inc.  
P O Box 1568  
Stafford, TX 77497

Ferguson Facilities Supplies  
P O Box 200184  
San Antonio, TX 78220

Jetall Companies Inc.  
2425 West Loop South Ste 1100  
Houston, TX 77027-4210

Kings 111 Emergency Communications  
751 Canyon Drive Suite 100  
Coppell, TX 75019

Logix Fiber Networks  
P O Box 734120  
Dallas, TX 75373

Mueller Water Treatment  
1500 Sherwood Forest Dr  
Houston, TX 77043

Smart Office Solutions  
6623 Theall Road  
Houston, TX 77066-1213  
(Returned to Sender / Unable to Forward)

Waste Management  
P O Box 660345  
Dallas, TX 75266

Metwall Design Solutions LLC  
10931 Day Road  
Houston, TX 77043-4901

US Retailers LLC d/b/a Cirro Energy  
Attn: Bankruptcy Department  
P O Box 3606  
Houston, TX 77253-3606

Naissance Galleria, LLC  
c/o Law Office of Nima Taherian  
701 N Post Oak Rd Ste 216  
Houston, TX 77024

H.N.B. Construction, LLC  
c/o Malcolm D. Dishongh  
P O Box 2347  
Humble, TX 77347-2347

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14800 Landmark Blvd Ste 400  
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2425 West Loop South Ste 350  
Houston, TX 77027-4208

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2425 West Loop South Ste 300  
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Houston, TX 77027-4205  
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2425 West Loop South Ste 350  
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*Counsel for Azeemeh Zaheer*

Omar Khawaja  
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Houston, TX 77056  
*Counsel for Azeemeh Zaheer*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

<b>IN RE:</b>	§	
	§	<b>Case No. 23-34815 (JPN)</b>
<b>GALLERIA 2425 OWNER, LLC</b>	§	
	§	<b>Chapter 11</b>
<b>Debtor.</b>	§	

---

**AGREED ORDER GRANTING EMERGENCY MOTION TO  
ENFORCE THE GATE-KEEPING PROVISIONS OF THE  
CONFIRMED CHAPTER 11 PLAN**

---

CAME ON FOR CONSIDERATION the Emergency Motion to Enforce the Gate-Keeping Provisions of the Confirmed Chapter 11 Plan (“Motion”) filed by National Bank of Kuwait, S.A.K.P., New York Branch (“NBK”). And the Court having considered the Response of Ali Choudhri to the Motion (the “Response”) in which Mr. Choudhri does not oppose the relief sought in the Motion, and the Court having further considered the record of the chapter 11 case, and all other evidence before it, and with the consent of NBK and the plaintiffs in the Pending Actions (defined below), and after due deliberation, the Court **ORDERS** that

1. The Motion is granted as and to the extent set forth herein.
2. The following actions (the “Pending Actions”)<sup>1</sup> are stayed as to all claims asserted against NBK pending further order of this Court:
  - Naissance Galleria, LLC v. Zaheer, et al, Cause No. 2023-43755 pending in the District Court of Harris County, Texas, 80th Judicial District.

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<sup>1</sup> NBK had initially sought to stay the action styled as *Naissance Galleria, LLC v. NBK*, Cause No. 2023-41091 pending in the District Court of Harris County, Texas, 129th Judicial District but the Plaintiff in that action nonsuited its claims therein. To the extent the Plaintiff in that action re-files its claims against NBK, then NBK may file a copy of this Order in that action as provided herein.

- *Galleria 2425, LLC, Naissance Galleria, LLC and Choudhri v. NBK*, Adversary Case No. 23-06009 pending in the U.S. Bankruptcy Court for the Southern District of Texas, Victoria Division.
  - Adversary Case No. 23-03263 in which Ali Choudhri's Second Amended Petition in Intervention remains pending.
2. Each plaintiff in the Pending Actions shall file a motion seeking a ruling, and showing cause why, the claims asserted in their respective Pending Actions are colorable, non-estate claims (each a "Show Cause Motion") no later than October 30, 2024. The failure to timely file a Show Cause Motion by a plaintiff shall be deemed to be an admission by that plaintiff that its Pending Action is an estate claim, or is not a colorable, non-estate claim, and the appropriate Pending Action shall be permanently stayed, removed if necessary to this Court, and dismissed with prejudice.
  3. Any written response to a Show Cause Motion shall be filed on or before November 12, 2024.
  4. Any reply in further support of a Show Cause Motion shall be filed on or before November 22, 2024.
  5. Any timely filed Show Cause Motion shall be heard on December \_\_, 2024 at \_\_\_\_\_ a.m./p.m. in Courtroom \_\_\_\_, United States Court House, 515 Rusk St., Houston, Texas.
  6. NBK shall serve a copy of this order on the Plaintiffs and their counsel of record, in the Pending Actions within two business day of the entry of this Order.
  7. NBK shall file a copy of this Order in each of the Pending Actions within two business days of the entry of this Order.

Signed: \_\_\_\_\_, 2024.

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Honorable Jeffrey P. Norman  
United States Bankruptcy Judge

Submitted by:

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**ENTERED**

October 10, 2024

Nathan Ochsner, Clerk

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION****IN RE:****GALLERIA 2425 OWNER, LLC****Debtor.**

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**Case No. 23-34815 (JPN)****Chapter 11**

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**AGREED ORDER GRANTING EMERGENCY MOTION TO  
ENFORCE THE GATE-KEEPING PROVISIONS OF THE  
CONFIRMED CHAPTER 11 PLAN**

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CAME ON FOR CONSIDERATION the Emergency Motion to Enforce the Gate-Keeping Provisions of the Confirmed Chapter 11 Plan (“Motion”) filed by National Bank of Kuwait, S.A.K.P., New York Branch (“NBK”). And the Court having considered the Response of Ali Choudhri to the Motion (the “Response”) in which Mr. Choudhri does not oppose the relief sought in the Motion, and the Court having further considered the record of the chapter 11 case, and all other evidence before it, and with the consent of NBK and the plaintiffs in the Pending Actions (defined below), and after due deliberation, the Court **ORDERS** that

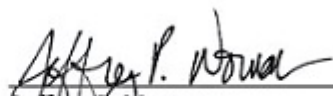
1. The Motion is granted as and to the extent set forth herein.
2. The following actions (the “Pending Actions”)<sup>1</sup> are stayed as to all claims asserted against NBK pending further order of this Court:
  - Naissance Galleria, LLC v. Zaheer, et al, Cause No. 2023-43755 pending in the District Court of Harris County, Texas, 80th Judicial District.

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<sup>1</sup> NBK had initially sought to stay the action styled as *Naissance Galleria, LLC v. NBK*, Cause No. 2023-41091 pending in the District Court of Harris County, Texas, 129th Judicial District but the Plaintiff in that action nonsuited its claims therein. To the extent the Plaintiff in that action re-files its claims against NBK, then NBK may file a copy of this Order in that action as provided herein.

- *Galleria 2425, LLC, Naissance Galleria, LLC and Choudhri v. NBK*, Adversary Case No. 23-06009 pending in the U.S. Bankruptcy Court for the Southern District of Texas, Victoria Division.
  - Adversary Case No. 23-03263 in which Ali Choudhri's Second Amended Petition in Intervention remains pending.
2. Each plaintiff in the Pending Actions shall file a motion seeking a ruling, and showing cause why, the claims asserted in their respective Pending Actions are colorable, non-estate claims (each a "Show Cause Motion") no later than October 30, 2024. The failure to timely file a Show Cause Motion by a plaintiff shall be deemed to be an admission by that plaintiff that its Pending Action is an estate claim, or is not a colorable, non-estate claim, and the appropriate Pending Action shall be permanently stayed, removed if necessary to this Court, and dismissed with prejudice.
  3. Any written response to a Show Cause Motion shall be filed on or before November 12, 2024.
  4. Any reply in further support of a Show Cause Motion shall be filed on or before November 22, 2024.
  5. Any timely filed Show Cause Motion shall be heard on December 3, 2024 at 9:00 a.m. in Courtroom 403, United States Court House, 515 Rusk St., Houston, Texas [parties by email may seek to reschedule this date, if they have pending conflicts].
  6. NBK shall serve a copy of this order on the Plaintiffs and their counsel of record, in the Pending Actions within two business day of the entry of this Order.
  7. NBK shall file a copy of this Order in each of the Pending Actions within two business days of the entry of this Order.

Signed: October 10, 2024

  
\_\_\_\_\_  
Jeffrey P. Norman  
United States Bankruptcy Judge

Submitted by:

**PILLSBURY WINTHROP SHAW PITTMAN LLP**

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**THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

In re:

GALLERIA 2425 OWNER, LLC,

Debtor.

## Chapter 11

Case No. 23-34815

**MOTION TO COMPLY WITH THE GATEKEEPING PROVISIONS OF THE  
CONFIRMED CHAPTER 11 PLAN**

**THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.**

**REPRESENTED PARTIES SHOULD ACT THROUGH THEIR RESPECTIVE ATTORNEYS.**

**To the Honorable Court:**

Ali Choudhri<sup>1</sup> hereby files this motion to comply with the gatekeeping provisions of the confirmed Chapter 11 Plan (Dkt. No. 566) (the “Plan”) and would respectfully show as follows:

1. When the National Bank of Kuwait, S.A.K.B., New York Branch (“NBK” or the “Bank”) proposed a plan of reorganization in this case (Dkt. No. 194), the Bank snuck several provisions into its proposed plan that exist solely for its own benefit. The Bank included itself among the “Exculpated Parties” that enjoy the Plan’s exculpation provision, and among the “Released Parties” covered by the Plan’s third-party release, even though the Bank is not a debtor in bankruptcy and has no connection to the Debtor, Galleria 2425 WL Owner, LLC or the bankruptcy estate other than as a lender. (*See* Plan arts. I(A)(39) & (78); *id.* IX(C) & (D)) The Bank also granted itself the benefit of the Plan’s gatekeeping provision, requiring parties to *any* litigation against the Bank bearing a relationship to this bankruptcy—pending in any court, anywhere—to receive approval from this Court before that litigation can continue. And the parties must obtain that approval according to a procedure and standards appearing nowhere in the Bankruptcy Code or the rules of state or federal procedure requiring them to demonstrate those claims

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<sup>1</sup> Naissance Galleria, LLC has also raised claims against the Bank, but as the result of an injunction entered in state court which is presently on appeal, Choudhri is not currently permitted to take action on Naissance’s behalf. *See* Appellant’s Opening Br. at 12, *Naissance Galleria, LLC v. Zaheer*, No. 01-23-00727-CV (Tex. App. Dec. 18, 2023) For that reason, Choudhri is filing this motion solely on his own behalf but provides information on the claims brought by Naissance Galleria, LLC for informational purposes. And because of the factually intertwined nature of the claims asserted by Choudhri and Naissance, the Court should give Naissance’s claims the same treatment as Choudhri’s for purposes of satisfying the gatekeeping provision.

are “colorable.” No legitimate bankruptcy purpose is furthered by extending this gatekeeping provision to the Bank. And the litigation subjected to the gatekeeping provision has no connection to, or effect on, the Debtor, the estate, or the Plan’s consummation. Instead, extending the gatekeeping provision to the Bank is simply the Bank’s reward for proposing the plan that the Court approved, a plan that already richly rewards the Bank with the right to credit bid on the valuable asset at the center of this bankruptcy—at a foreclosure sale the Bank itself arranged.

2. The Bank now demands that the Court enforce the terms of the Plan’s gatekeeping provision and invites the Court to dismiss claims against the Bank in the following three pending cases (the “Challenged Litigation”):

*Naissance Galleria, LLC v. Zaheer, et al.*, Cause No. 2023-43755, pending in the 80th District Court of Harris County, Texas;

*Galleria 2425, LLC, Naissance Galleria, LLC and Choudhri v. NBK*, Adversary Case No. 23-06009, pending in this Court; and

*Choudhri v. NBK and Zaheer*, Adversary Case No. 23-03263, pending in this Court.

(*See* Dkt. No. 758 at 2-3; Dkt. No. 771)

3. But the Court should reject the Bank’s invitation. Gatekeeper provisions certainly have their uses. And the Plan’s gatekeeping provision may have some legitimate use in protecting the Trustee in this case. But the Bank’s demand to invoke that protection for itself is a bridge too far. This Court’s gatekeeping services are not a party favor that the Bank can obtain simply by participating in the bankruptcy. Nor are they a convenience

whereby the Bank can shed liabilities simply because it would like to be rid of them. The only legitimate purposes for a gatekeeping order include protecting the Debtor, the estate, and the implementation of a bankruptcy plan. None of those purposes are served here. Allowing the Bank to make use of the Plan's gatekeeping provision would therefore contravene longstanding precedent, exceed the confines of the Bankruptcy Code, and violate fundamental limits on bankruptcy courts' jurisdiction. Accordingly, the Plaintiffs should not be forced to satisfy the Plan's gatekeeping provision before proceeding.

4. But even if the Court did stretch its gatekeeping powers to protect the Bank, there should be no doubt that each of the cases among the Challenged Litigation satisfies the gatekeeping provision's requirements. This Court has already declined to exercise jurisdiction over one of these cases—finding that it would not “affect assets of the bankruptcy estate”—and the Court should not revisit that decision to exercise jurisdiction over that case now. (Order, Adv. No. 23-03259 (Bankr. S.D. Tex. Jan. 11, 2024) [Dkt No. 24]) All three cases concern a core set of operative facts regarding uncontroversial lender-liability claims that are colorable under any standard, which is why no *other* court has dismissed them. This Court should not be the first. The Challenged Litigation should be permitted to proceed.

#### **BACKGROUND**

5. The plan of reorganization that the Bank proposed (Dkt. No. 194) and the Court confirmed (Dkt. No. 566) contains several provisions that protect the Bank and other non-debtors from claims against other non-debtors. The Plan's “Exculpation” provision covers specified “Exculpated Parties,” which are defined to include the Bank (Plan art.

I(A)(39)), protecting them from liability arising from conduct relating to the bankruptcy itself, including such actions as “filing, negotiating, prosecuting, administering, formulating, implementing, soliciting support or acceptance of, confirming or consummating” the Plan, the Purchase Agreement, or the property to be distributed under the Plan (*id.* art. IX(C)).

6. The Plan’s “Estate Releases” covers certain “Released Parties,” which are also defined to include the Bank (Plan, art. I(A)(78)), granting them protection from claims by “the Debtor” or the “Estate” concerning “the money borrowed by the Debtor” (*id.* art. IX(D)).

7. By their terms, neither of these provisions apply to the Challenged Claims. While the Bank is both an Exculpated Party and a Released Party, neither of the Plaintiffs in those cases, Ali Choudhri and Naissance Galleria, LLC (*see* Dkt. 758 at 2) qualify as “the Debtor” or part of the “Estate.” Ali is the “Debtor’s principal.” (*Id.*) And Naissance is provided mezzanine financing for the Debtors’ purchase of the property at issue. So the Plan’s Estate Release provision does not apply to these claims. The Exculpation provision does not apply either, because these claims arose before the bankruptcy and therefore do not concern any Released Party’s conduct during the bankruptcy.

8. Yet oddly, the Plan’s gatekeeper provision provides protection that is broader than both the Estate Releases and Exculpation provisions. That gatekeeping provision pertains to any “Person who has held, holds, or may hold Claims” that are “in any way *related* to the Debtor,” so long as they are brought “against any Released *Party*”—even if the claims themselves are not released under the Estate Releases. (Plan, Art. IX(E)) And



the gatekeeper provision does not merely apply to claims challenging conduct occurring *during* the bankruptcy but covers claims that “arose *before* the Petition Date.” (*Id.*) For these claims, the parties must seek “notice and a hearing” wherein the parties must demonstrate to the Court that the claims asserted are valid before they can proceed. (Plan, Art. IX(E)) And to demonstrate the validity of that claim, the party must demonstrate that the claim is “colorable” and that the party “has standing and is otherwise entitled to assert” it. (*Id.*)

9. The gatekeeper provision therefore purports to convey to the Bankruptcy Court the authority to approve, control, adjudicate, and ultimately terminate claims in pending litigation—including cases pending in other courts—merely because that litigation is “related to the Debtor,” according to a test and a procedure appearing nowhere in the Code or the federal rules. It allows the Bank to make use of this power to have the Court dismiss claims that are not even released under the Plan. And the Bank now invokes this provision to have the Court terminate all the Plaintiffs’ litigation against the Bank—even when the courts where that litigation is pending would allow that litigation to proceed, and even where the litigation at issue would not have any effect on the bankruptcy estate itself. That is not something the Court can do—nor is it something the Court *should* do.

## ARGUMENT

### **I. The Bank cannot invoke the Plan’s gatekeeping provision to dismiss any of the claims against the Bank in the Challenged Litigation.**

10. The Court should not dismiss any of the claims asserted against the Bank in the Challenged Litigation because none of those claims can properly be subject to the Plan’s gatekeeping provision. So the Plaintiffs are not required to obtain the Court’s

approval before pursuing them. And even if the Plaintiffs are required to obtain the Court's gatekeeping approval to proceed on these claims, Plaintiffs can readily make the showing required to obtain that approval, because Plaintiffs' claims are grounded in theories of lender liability personal to them that have long been recognized under Texas law. That makes them colorable by any standard.

**A. Bankruptcy courts' gatekeeping powers can only be invoked to protect trustees and other court-appointees—not private parties serving in no official bankruptcy capacity like the Bank.**

11. The first problem with the Bank's invocation of the Court's gatekeeping authority is that the Bank's demand exceeds the limited authority that bankruptcy courts possess to approve, control, adjudicate, or terminate claims in pending litigation. There is nothing in the Bankruptcy Code that conveys such gatekeeping power to bankruptcy courts. Instead, that power is derived from the century-old Supreme Court case, *Barton v. Barbour*, 104 U.S. 126 (1881). "Under the '*Barton* doctrine,' the bankruptcy court may require a party to 'obtain leave of the bankruptcy court before initiating [or maintaining] an action in district court *when the action is against the trustee or other bankruptcy-court-appointed officer, for acts done in the actor's official capacity.*'" *NexPoint Advisors, L.P. v. Highland Capital Mgmt., L.P. (In re Highland Cap. Mgmt., L.P.)*, 48 F.4th 419, 439 (5th Cir. 2022) (quoting *Villegas v. Schmidt*, 788 F.3d 156, 159 (5th Cir. 2015) (emphasis added)). The *Barton* doctrine was created to "prevent trustees from being subject to legal proceedings that interfere with their ability to administer the estate." *In re Cir. City Stores, Inc.*, 557 B.R. 443, 447 (Bankr. E.D. Va. 2016); *see also generally* COLLIER ON BANKRUPTCY ¶ 10.01 (16th ed. 2023) (citing and discussing cases). The doctrine therefore

serves to protect trustees and other bankruptcy-court appointees from vexatious and harassing litigation that could drain the estate and hamper bankruptcy plan implementation.

12. There are several reasons why the Bank cannot legitimately invoke the *Barton* doctrine to have the Court terminate any claims against the Bank in the Challenged Litigation. For one thing, because the *Barton* doctrine exists only to protect trustees and other bankruptcy-court appointees, it cannot be invoked by private parties like the Bank that are not serving in any official court-appointed capacity. Indeed, in *Highland Capital*, the Fifth Circuit refused to “extend gatekeeping protections to non-debtors,” including Highland’s interim CEO. *Matter of Highland Cap.*, 48 F.4th at 435–39 (vacating gatekeeping provision “as to all parties *except* Highland Capital, the Committee and its members, and the Independent Directors for conduct within the scope of their duties”). And the Fifth Circuit’s only recent opinion that actually applies the *Barton* doctrine did so in the context of a trustee, not a private corporation with no official bankruptcy role. *See In re Foster*, No. 22-10310, 2023 WL 20872, at \*5–\*6 (5th Cir. Jan. 3, 2023). For this reason alone, the Bank is not entitled to invoke the Bankruptcy Court’s gatekeeping authority.

13. Furthermore, not only are *Barton*’s gatekeeping protections reserved for actors appointed to serve in official bankruptcy capacities, they only protect those actors for actions taken within the scope of their “official duties.”<sup>2</sup> But the Bank has no official

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<sup>2</sup> *In re Ondova Ltd. Co.*, 914 F.3d 990, 993 (5th Cir. 2019); *see also In re Christensen*, 598 B.R. 658, 665 (Bankr. D. Utah 2019); *Phoenician Mediterranean Villa, LLC v. Swope (In re J & S Props., LLC)*, 545 B.R. 91, 105 (Bankr. W.D. Pa. 2015). A typical example is litigation against a receiver who seizes or otherwise attempts to administer property that is not receivership property,

duties in implementing the Plan or overseeing the Debtor’s dissolution. The foreclosure sale at the center of the bankruptcy will be conducted and overseen by the Liquidation Trustee. (*See* Plan, art. VI(A)) The only duties that the Plan specifically assigns to the Bank are purely ministerial. And the only substantive right that the Plan provides to the Bank is the completely voluntary (and unofficial) right to credit bid the amount of its debt at the foreclosure sale for its own private benefit, which comes with a contractual promise to pay certain junior claims if its bid is successful. (*See* Plan, Introduction) The Challenged Litigation does not contest the Bank’s exercise of any of these powers, rights, or responsibilities conveyed under the Plan. That litigation pertains only to the Bank’s pre-bankruptcy conduct that arose long before the Plan was ever proposed. For this additional reason, *Barton* does not apply.

14. Indeed, the only reason the Plan contains gatekeeping protections for the Bank is that the Bank *proposed* the Plan—and thus snuck that protection into the Plan for itself, demanding it as a condition to undertaking its minimal responsibilities in implementing the Plan. And the Bank did not seek this protection to benefit the estate, but simply to allow it to escape litigation it would rather not face. That is not a legitimate use of *Barton* gatekeeping powers. The Fifth Circuit has held that even when private parties face “exposure” to truly “vexatious” and frivolous litigation, bankruptcy courts are not empowered to use gatekeeping powers to halt it. *See Highland Capital Mgmt.*, 48 F.4th at

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but actually belongs to a third party. *See In re DMW Marine, LLC*, 509 B.R. 497, 506 (Bankr. E.D. Pa. 2014) (citations omitted).

430, 440 n.19. And as explained below—the Challenged Litigation is neither vexatious nor frivolous.

**B. Bankruptcy courts’ gatekeeping powers have been significantly constrained by the Supreme Court’s decision in *Purdue Pharma*.**

15. In any event, whatever gatekeeping powers bankruptcy courts possess have been significantly constrained by the Supreme Court’s recent decision in *Harrington v. Purdue Pharma L.P.*, 144 S. Ct. 2071 (2024) (“*Purdue Pharma*”), which held that “[t]he bankruptcy code does not authorize a release and injunction that, as part of a plan of reorganization under Chapter 11, effectively seek to discharge claims against a nondebtor without the consent of affected claimants.” *Id.* A bankruptcy court’s exercise of its gatekeeping authority to dismiss litigation against non-debtors is the functional equivalent of the non-consensual releases outlawed by *Purdue Pharma*—especially when used to dismiss litigation pending in other courts. Both involve exercises of authority to control, adjudicate, and ultimately terminate claims in litigation without consent, and without consideration—and *Purdue Pharma* confirms that this something that bankruptcy courts are not empowered to do.

16. For all these reasons, allowing the Bank to terminate the Challenged Litigation would exceed the Court’s legitimate authority to impose gatekeeping conditions under *Barton*. If the Bank wants to halt this litigation, it can do so through established procedural mechanisms in the Challenged Litigation.

**C. The Court would exceed its jurisdiction by dismissing the Challenged Litigation.**

17. The Court would also exceed its jurisdiction by using the gatekeeping powers

provided under the Plan to adjudicate and dismiss the Challenged Litigation. The Bank seeks only to dismiss litigation against itself, and dismissing that litigation affects only the Bank—having no conceivable effect on the Debtor or the estate. Indeed, on January 11, 2024, this Court remanded one of the proceedings among the Challenged Litigation—Cause No. 2023-43755—back to the 80th District Court of Harris County because it determined that “all the causes of action constitute claims rooted in Texas state law,” “there are no bankruptcy issues or claims in the state court litigation,” and “there has been no showing that the remand would affect assets of the bankruptcy estate.” (Case No. 23-03259 [Dkt No. 24] (Bankr. S.D. Tex. Jan. 11, 2024)) The same is true of the other cases in the Challenged Litigation—because, as the Bank insists, these cases all share the same “basic facts and claims.” (Dkt. No. 758 at 4) But that shared lack of connection to the estate deprives the Court of jurisdiction to resolve any of these cases through its gatekeeping powers.

18. As the Fifth Circuit recognized in *Highland Capital*, the question of whether a claim may be resolved by a bankruptcy court through exercise of gatekeeping powers under *Barton* is entirely separate from the question of whether the Court has *jurisdiction* to resolve that litigation. 48 F.4d at 439 (holding, after approving of a gatekeeping provision to protect certain court-appointed officials, that “the bankruptcy court, faced with pre-approval of a claim” on remand, would still have “to determine whether it had subject matter jurisdiction over that claim in the first instance.”). That makes sense, because the mere fact that the Plan contains a gatekeeping provision does not confer jurisdiction to resolve claims under that gatekeeping power: “[P]arties cannot confer subject matter

jurisdiction on federal courts,” including through a bankruptcy plan. *Randall & Blake Inc. v. Evans*, 196 F.3d 579 (5th Cir. 1999).

19. Instead, “[j]urisdiction for bankruptcy cases is rooted in the provisions of 28 U.S.C. § 1334.” *Matter of Walker*, 51 F.3d 562, 568 (5th Cir. 1995) (citing *Celotex Corp. v. Edwards*, 514 U.S. 300, 303 (U.S.1995) (stating that “[t]he jurisdiction of the bankruptcy courts ... is grounded in and limited by statute”)). And a “third-party action” between two non-debtors “does not create ‘related to’ jurisdiction” under section 1334 “when the asset in question is not property of the estate and the dispute has no effect on the estate.” *Feld v. Zale Corp. (In re Zale Corp.)*, 62 F.3d 746, 753 (5th Cir. 1995). Accordingly, because the claims against the Bank asserted in the Challenged Litigation do not have any effect on the estate, the Court lacks jurisdiction to hear them—much less dismiss them.

20. It does not matter that the Plan’s gatekeeper provision requires that the dispute must be “related to the Debtor” to fall within its scope. (Plan, art. IX(E)). Mere “shared facts between the third-party action and a debtor-creditor conflict do not in and of themselves suffice to make the third-party action ‘related to’ the bankruptcy.” *In re Zale Corp.*, 62 F.3d at 753. Accordingly, a mere factual interrelationship between the Challenged Litigation and the arguments asserted in the bankruptcy does not convey jurisdiction to the Court to resolve that litigation.

21. The Bankruptcy Court therefore lacks the power to require the Plaintiffs to comply with the gatekeeping orders to maintain that litigation, and the Plaintiffs in the Challenged Litigation are not required to obtain this Court’s permission before maintaining it. *See Tufts v. Hay*, 977 F.3d 1204, 1210-11 (11th Cir. 2020) (“Thus, under the

‘conceivable effects’ test for section 1334(b), the Bankruptcy Court did not have jurisdiction to consider Tufts’s action, and Tufts counsel were not required to obtain leave from that court before filing this action in the District Court.”).

**II. The claims raised against the Bank satisfy the Plan’s gatekeeping provision because they raise colorable lender-liability claims that the Plaintiffs have standing to pursue.**

22. Yet even if the Plaintiffs’ claims against the Bank in the Challenged Litigation may be properly subjected to the Plan’s gatekeeping provision, those claims satisfy the gatekeeping provision’s standard for obtaining this Court’s permission to maintain those claims.

23. The remaining two actions include claims against the Bank, but these claims easily satisfy the gatekeeping provision’s low threshold for maintaining a claim. Two of these cases originated in state court, and one was remanded in January. (Case No. 23-03259 [Dkt No. 24] (Bankr. S.D. Tex. Jan. 11, 2024)) The final case is an adversary proceeding that the Debtor filed in this court in conjunction with its original bankruptcy. *See Exhibit 1* (Original Complaint, No. 23-06009 (Bankr. S.D. Tex. Sept. 19, 2023) [Dkt. No. 1]) And the claims raised against the Bank in both cases are “colorable.”

24. The term “colorable” is not defined in the Plan or in the gatekeeping provision, but it nevertheless invokes the exceptionally low standard for determining whether a defendant has been fraudulently joined to avoid diversity jurisdiction. *See Overholt v. Purina Animal Nutrition LLC*, Case No. 1:14-CV-1216, 2015 WL 1631855, at \*2 (W.D. Mich. Apr. 13, 2015) (“Under the fraudulent joinder rule, courts may disregard the citizenship of parties against whom there is no ‘colorable’ cause of action.”). This



standard is “similar to, but more lenient than, the analysis applicable to a Rule 12(b)(6) motion to dismiss.” *Casias v. Wal-Mart Stores, Inc.*, 695 F.3d 428, 433 (6th Cir. 2012). And even under a Rule 12(b)(6) analysis, the standard that courts apply is decidedly lenient and plaintiff-friendly, requiring a court to evaluate the sufficiency of plaintiff’s complaint by accept[ing] all well-pleaded facts as true, viewing them in the light most favorable to the plaintiff.” *In re Katrina Canal Breaches Litig.*, 495 F.3d 191, 205 (5th Cir. 2007) (internal quotation marks and alteration omitted). The Court must resolve all disputed questions of fact and ambiguities in the controlling state law in favor of the non-removing party. *Coyne*, 183 F.3d at 493. And to be “colorable,” a claim need not meet “the stricter 12(b)(6) pleadings under *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009).” *Overholt*, 2015 WL 1631855, at \*7-8.

25. Plaintiffs’ remaining claims against the Bank readily meet this lenient standard. The cases concern a common core of operative facts underlying all three cases in the Challenged Litigation relating to the Bank’s efforts to foreclose on the Debtor’s property so it could obtain that property for itself. *See* The Bank loaned the Debtor over \$50 million to purchase the property (Dkt. No. 565 at 4), but throughout the life of the loan, the Bank made it progressively more difficult for the Debtor to pay that loan back. As Plaintiffs have alleged in the state court proceedings, the Bank inserted itself directly into the Debtor’s business operations, interfering with those business operations in numerous unjustified ways. **Exhibit 2** (Plaintiff’s Sixth Amended Petition, No. 2023-22748 (Harris County Dist. Ct. Dec. 18, 2023)). And the pleadings in Case No. 23-6009, the adversary proceeding which remains pending in this Court, contains similar allegations of

interference by the Bank. (Ex. 1, ¶¶9-21)

26. For example, the Bank thwarted the Debtor's efforts on at least *five* different occasions to sell interests in the building that would have cleared the Bank's debt—often through strategic declarations of defaults or foreclosure postings designed to discourage prospective buyers. (*See* Ex. 2, ¶¶ 22, 31- 33) The Bank likewise refused to approve or ignored at least *nine* different offers to lease space in the building, thereby preventing the Debtor from raising funds to pay off the loan, eventually forcing the Debtor to bring suit. (*Id.* ¶¶23, 27)

27. After the parties settled their litigation through a Confidential Settlement Agreement (Dkt. No. 403-4) that reduced the principal amount due under the loan, Plaintiff alleged that the Bank improperly disclosed the terms of the Confidential Settlement Agreement in direct violation of its express confidentiality obligations by disclosing the new loan balance to potential purchasers of the property, thereby revealing the Debtor's financial struggles, improperly impacting these prospective buyers' evaluation of the property's market value, "chill[ing] the market" for the property, and converting these potential buyers who would have negotiated a sale with the Debtor into potential purchasers of the Bank's note. (*See* Ex. 2, ¶¶28-29, 63-64)

28. The Bank also actively attempted to wrest control of the Debtor and its property from Choudhri by interfering with Choudhri's control of Naissance. The Bank worked in league with Azeema Zaheer, Choudhri's ex-girlfriend, who acted as his agent in running Naissance until Ali exercised his right to take over control of the company from her. (*See* Ex. 2, ¶¶ 36-46) And these efforts by the Bank and Zaheer were all part of a larger

effort by Choudhri's disgruntled business partner, Osama Abdullatif, to seize Choudhri's business interests by brute force and fraud. Abdullatif has arranged to have hard drives seized from Choudhri's companies (**Exhibit 3** at 1 [Declaration of Quanell X Farrakhan No. 1]) He has also even arranged for Choudhri to be accused of a murder-for-hire plot to kill Abdullatif himself, which authorities dismissed as "a hoax." (*Id.*; *see also* **Exhibit 4** [Quanell X Farrakhan Aff. No. 2]) And Omar Khawaja, an attorney and close business associate of Abdullatif, admits to representing Abdullatif and Zaheer in furtherance of Abdullatif's avowed goal of seizing all of Choudhri's business interests through litigation—under their theory: "If [Ali] own[s] it, we own it." (**Exhibit 5** [Deposition of Omar Khawaja] at 23: 30: 17-21; 163:8-165:2; 194:3-6)

29. Plaintiffs supported these allegations with voluminous documentary evidence, including examples of lease proposals that were rejected or ignored and elicit communications between Bank representatives and Zaheer. (*See* Ex. 2, pp. 6-7, 8, 9) Indeed, Plaintiffs produced a key document in their pleadings in which the Bank encouraged Zaheer to "stay on" until the Bank could find a "suitable replacement for her," even after Choudhri had exercised his right to regain control over the company, thereby demonstrating the Bank's intentional efforts to interfere with Choudhri's management of Naissance. (*See* Dkt. No. 88-29 at 1-2) The operative pleadings in these actions raise numerous claims against the Bank, including breach of contract, tortious interference, fraud, business disparagement, breach of the duty of good faith and fair dealing, unjust enrichment, and conspiracy. *See* Ex. 2, ¶¶ 62, 104)

30. The Plaintiffs have also alleged how the Debtor, Naissance, and Choudhri all

experienced independent injuries from the Bank's conduct: While the Debtor was deprived of its right to survive and thrive as an ongoing business, Naissance and Choudhri suffered their own loss of a significant asset. And this establishes that Naissance and Choudhri each have standing to pursue claims against the Bank independently.

31. While the facts alleged in the Challenged Litigation paint an extraordinary factual picture, they nevertheless present classic lender liability claims that have long been recognized under Texas law. Such lender-liability claims frequently involve both breach-of-contract *and* tort claims. *See Williams v. National Mortg. Co.*, 903 S.W.2d 398, 404 (Tex. Ct. App. 1995); *Jones v. First Nat'l Bank of Anson*, 846 S.W.2d 107, 109 (Tex. Ct. App. 1992, no writ) (concerning causes of action for breach of duty of good faith and fair dealing, breach of fiduciary duty, negligent misrepresentation, conversion, estoppel, and violations of the Deceptive Trade Practices Act); *Lamar Sav. Ass'n v. White*, 731 S.W.2d 715, 717-18 (Tex. Ct. App. 1987) (causes of action for breach of contract, breach of fiduciary duty, usury, duress, estoppel, and tortious interference).

32. And courts have found such lender-liability claims to be viable under factual circumstances that are virtually identical to those at issue in this case. Texas courts have found that lenders can be held liable for wrongful defaults and wrongful acceleration. *See, e.g., Rey v. Acosta*, 860 S.W.2d 654 (Tex. Ct. App. 1993); *Dixon v. Brooks*, 604 S.W.2d 330, 334 (Tex. Ct. App. 1980). Courts also routinely permit lenders to be held liable in the

context of improper refusals to approve leases.<sup>3</sup> And courts have even allowed borrowers to maintain claims that banks have conspired with others to interfere with their borrowers' businesses. *See, e.g., State Nat'l Bank v. Farah Mfg. Co.*, 678 S.W.2d 661 (Tex. Ct. App. 1984). Indeed, the Bankruptcy Court for the Northern District of Texas recently found a lender liable under factual circumstances that are equally extreme to this case. *See Bailey Tool & Mfg. Co., et al. v. Republic Bus. Credit (In re Bailey Tool & Mfg. Co.)*, Adv. No. 16-03025-SGJ (Bankr. N.D. Tex. December 23, 2021) (holding lender liable under numerous theories for, among other things, taking aggressive action to protect its interests, impacting the company's liquidity, and communicating in secret with the company's customers to have them pay the bank instead of the company). These cases demonstrate that the legal theories that Plaintiffs have asserted are well-founded in Texas law, and the allegations, while extraordinary, are hardly implausible. And that is why no court has ever dismissed them. That makes them colorable.

33. And while, during plan confirmation, the Court concluded that these claims were "implausible" and "not viable" (Dkt. No. 565 at 17), Plaintiffs respectfully submit that these determinations should not be the Court's final word on the matter. During plan confirmation, the Plaintiffs were not permitted to present, and the Court was not permitted to hear, a full airing of the evidence to support the Plaintiffs' claims. It heard a mere summary. But even in that limited summary, the Court heard testimony from two of the

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<sup>3</sup> *See, e.g.,* Metropolitan Corporate Counsel, *Liability Awaits the Unwary: Lenders and Leasing Decisions* (Dec. 13, 2004), <https://bit.ly/4e6fGe7>.

state's most respected attorneys, Tom Phillips, former Chief Justice of the Texas Supreme Court, and Jerry Alexander, both of whom felt the claims were so strong that they were both willing to take the case on contingency. (*See* Dkt. No. 570) While the Court discounted that testimony because the lawyers explained only that the Debtor "had claims" but never "explained how or why these claims arose," those questions are answered by the operative pleadings in the pending litigation, which provide extensive factual detail and evidence regarding the origin and basis for these claims. (Dkt. No. 565 at 17)

34. The Court made barely any mention of the factual or legal merits of those claims. Instead, the Court simply found the claims incredible, questioning why the Debtor had "never been able" to pay the note, determining that it was unlikely likely that the Bank had "breached" the Settlement Agreement first, excusing the Debtor's own failure to pay, and challenging Choudhri's credibility as a witness. (Dkt. No. 565 at 17) But the first of these holdings ignore the Plaintiffs' factual allegations—which the Court must accept as true—that the Bank interfered with the Debtor's ability to pay the note. And the latter two should not weigh in the balance in determining whether Plaintiffs' claims against the Bank are "colorable," which requires examining solely the allegations pleaded and setting aside questions of witness credibility. Indeed, the fact that two well-respected Texas attorneys are willing to pursue the litigation on a contingency basis provides ample evidence that the claims are in fact "colorable."

35. Finally, while the Court expressed concern about the motivations behind these various pieces of litigation, concluding that they were primarily meant "to postpone a real estate foreclosure" (Dkt. No. 565 at 16), those concerns are unfounded. Lender

liability claims are frequently asserted in efforts to halt foreclosure. *See, e.g., Williams*, 903 S.W.2d at 404; *Jones*, 846 S.W.2d at 109. And the factual context in which those claims arose does not undercut their viability.

### CONCLUSION

For these reasons, Ali Choudhri respectfully requests that this Motion to Comply with the Gatekeeping Provisions of the Confirmed Chapter 11 Plan be granted, and that none of the claims in the challenged litigation should be dismissed.

Respectfully submitted,

*/s/ J. Carl Cecere*

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*Counsel for 2425 WL, LLC and Ali  
Choudhri*

**CERTIFICATE OF SERVICE**

The undersigned certifies that on October 30, 2024, a true and correct copy of the foregoing was served via the Court's CM/ECF system to all parties who are deemed to have consented to ECF electronic service, and via email, including to each of the parties listed below.

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**J. Carl Cecere**



## EXHIBIT 1

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
VICTORIA DIVISION**

*In re:*

**GALLERIA 2425 OWNER, LLC**

*Debtor,*

**GALLERIA 2425 OWNER, LLC,  
 NAISSANCE GALLERIA, LLC, AND  
 ALI CHOUDHRI**

*Plaintiffs,*

**V.**

**NATIONAL BANK OF KUWAIT, S.A.K.P.,  
NEW YORK BRANCH**

***Defendant.***



**Case No. 23-60036**  
**(Chapter 11)**

Adversary No. \_\_\_\_\_

**CONTAINS JURY DEMAND**

**GALLERIA 2425 OWNER, LLC, NAISSANCE GALLERIA, LLC,  
AND ALI CHOUDHRI'S ORIGINAL COMPLAINT AGAINST  
NATIONAL BANK OF KUWAIT, S.A.K.P., NEW YORK BRANCH**

COME NOW Galleria 2425 Owner, LLC, Naissance Galleria, LLC, and Ali Choudhri (“*Plaintiffs*”), and make and file this their Original Complaint against National Bank of Kuwait, S.A.K.P., New York Branch (“*Defendant*”), and for same show the Court as follows:

## I. JURISDICTION AND VENUE

1. This Court has personal jurisdiction over the Defendant named in this Complaint due to the fact that the Defendant transacts business in the State of Texas, including entering into a contract with a resident of the State of Texas performable in whole or in part within the State of Texas, or have committed a tort in whole or in part in Texas and are thus subject to the Texas Long

Arm Statute, Section 17.042 of the Texas Civil Practice and Remedies Code. The Court also has personal jurisdiction over the Defendants pursuant to 29 U.S.C. §1132(f).

2. The Court has subject matter jurisdiction of this Adversary Proceeding pursuant to 28 U.S.C. § 1334.

3. This adversary proceeding constitutes a core proceeding under 28 U.S.C. § 157(b)(2)(A), (B), (C), (D), (H), and (O) because it will determine the amount of NBK's claim against the Debtor. To the extent the Court determines that any of the claims asserted herein are not core, the Plaintiffs hereby request and demand a trial by jury.

4. Venue of the Bankruptcy Case and the Adversary Proceeding is appropriate in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

## **II.** **PARTIES**

### **A. Galleria 2425 Owner, LLC.**

5. Galleria 2425 Owner, LLC ("**Debtor**") is a limited liability company doing business in Texas and is the owner of the building located at 2425 West Loop S., Houston, Texas ("**2425 Building**"). It is the Debtor in the bankruptcy case in which this Adversary is filed.

6. Naissance Galleria, LLC is a limited liability company doing business in Harris County, Houston, Texas.

7. Ali Choudhri is an individual residing in Harris County, Texas.

8. Defendant National Bank of Kuwait, S.A.K.P., New York Branch ("**NBK**") is a banking corporation organized under the laws of Kuwait, acting through its New York Branch. Defendant has not designated a registered agent for service of process in the State of Texas, but under Rule 7004(a)(8) of the Federal Rules of Bankruptcy Procedure, NBK may be served by mailing a copy of the Complaint to Corporation Service Company, 299 Park Avenue, New York,

New York 10171. Plaintiff requests that the clerk issue citation at this time. NBK has also filed a motion to dismiss the bankruptcy of Debtor and it and its counsel will be served by ECF in that proceeding.

### **III. FACTUAL BACKGROUND**

9. In 2018, Defendant NBK loaned certain funds to Debtor. There have been various disputes between the Debtor and NBK about the timeliness of payments and the extent and validity of Defendant's security, but the gravamen of Debtor's Complaint is NBK has continually interfered with the Debtor's ability to lease the 2425 Building to produce revenue and Debtor's ability to sell the 2425 Building to pay NBK off. Every time NBK has so interfered, it has then blamed the Debtor for its inability supposedly to meet some of the loan terms.

10. For example, in January 2021, Plaintiff Ali Choudhri, who is vilified by NBK in various pleadings, had the building at 2425 West Loop South, Houston, Texas, the asset of the Debtor, sold for a purchase price of \$85 million, more than enough to clear NBK's debt. Attached hereto as **Exhibit 1** is a letter dated January 15, 2021 from SIBS International and two purchase contracts which would have paid off not only NBK, but left the Debtor and the other Plaintiffs with a great deal of value. NBK, rather than facilitate this sale, issued a formal notice of default to the Debtor and its intent to accelerate the loan on June 29, 2021, while the SIBS International deal was in progress, killing that deal.

11. The same was true with regard to NBK's interference with the Debtor's attempt to lease space in the building to provide revenue so it could operate and make loan payments. By August 2021, this situation had become untenable due to NBK's refusal to approve new tenants and new leases, prompting the Debtor on August 13, 2021 to send NBK a detailed letter regarding lease-up and renewal prospects for discussions, none of which, it seemed NBK would approve.

♦ **Healthcare Service Organization**

- •Size: 130,000+ RSF – large client requirement in their preliminary planning stages:  
•Industry: Healthcare Service Organization •Type of use: Administration Offices  
•Direct/Sublease •Commencement date: Q3/2023 •Term:5-10 yrs. They are specifically VERY interested in amenities available, for example: deli, gym, day care, conference center (# of seats), training center (# of seats).

♦ **Invesco**

- We met with the team twice and are actively pursuing them for 2425. They are interested in a 157-month lease term for 208,830 SF of Net Rental Area.

♦ **Financial Services Firm**

- Office •AREA: West Houston (610 West, Hwy 290, Beltway 8) •SPACE: Open Concept  
•SIZE: Approximately 20,000 – 25,000 rsf •PARKING: 5/1000 ratio •OCCUPANCY: Late 2Q22/Early3Q22 •TERM: 36-60 months with renewal options •This tenant is currently at 24 Greenway on their top floor and have been looking at other A buildings.

♦ **Beyond Finance**

- We are discussing a 68-month lease term for +/- 40,000 rentable SF.

♦ **Banco Affirme**

- We submitted a 64-month lease term for 4,545 SF of Net Rental Area.

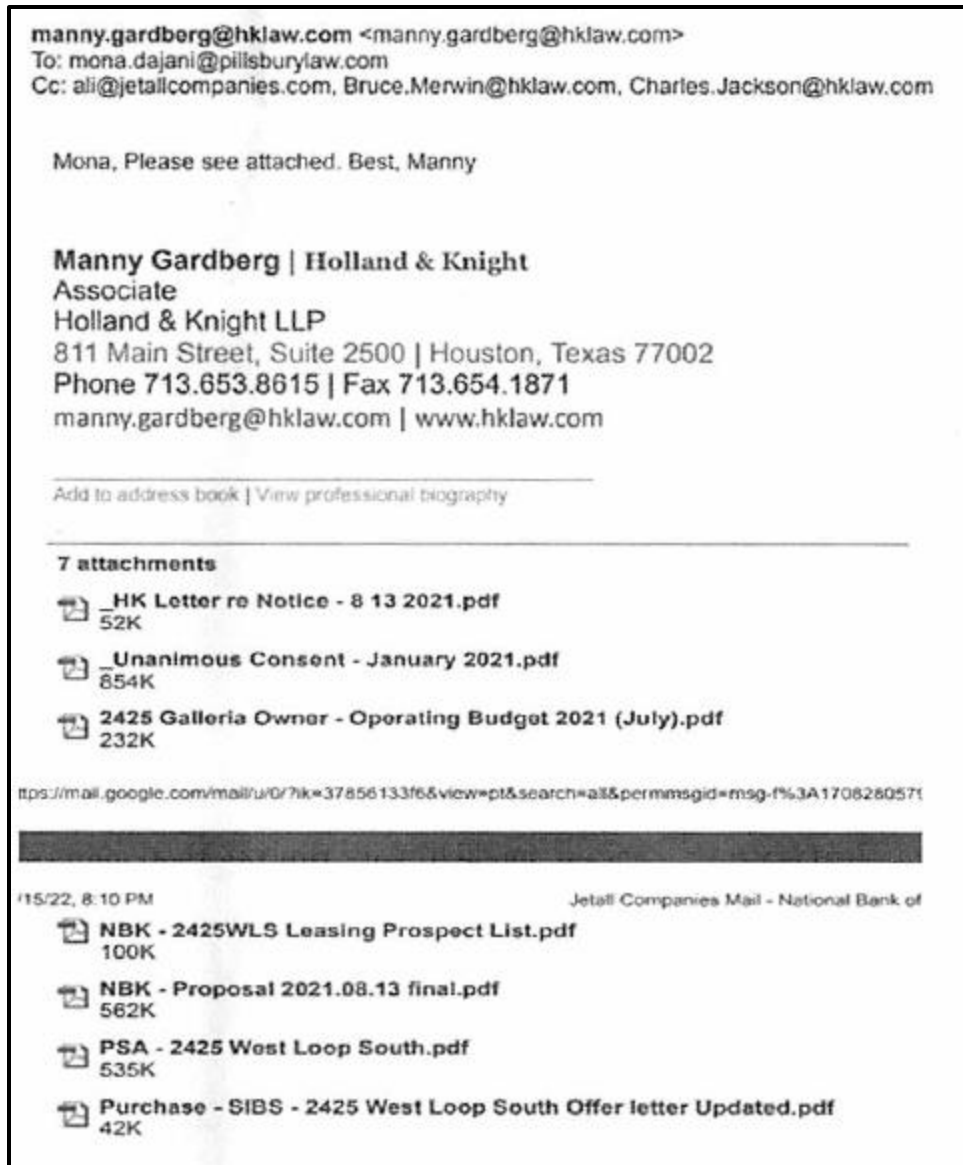
♦ **Walls Bank (existing tenant)**

- Renew 3,054 SF of rental space for 60-month term starting January 1, 2022.

♦ **Others (working directly with ownership)**

- ResMed (<https://www.resmed.com/en-us/>), interested in the entire building, working directly with Dr. Peter Farrell, Founder and Chairman
- Healthstore Holdings (<https://www.healthstore.com/>), interested in a 15-year term with 80,000 SF in phase 1 and 75,000 SF in 12 months as phase 2
- Immunicom (<https://immunicom.com/>), interested in at least two full floors, moving HQ from San Diego, CA

12. Reproduced below is an August 16, 2021 email from counsel for the Debtor to NBK forwarding multiple leases for approval that NBK had failed to approve or even respond to.



This lack of approval, or finding obstacles to approve, was not new. In September 2019, Related Group had reached out to lease the parking garage located at the 2425 Building to be used for overflow, for parking up to 110 spaces. NBK’s authorized representative Michael Carter would not approve this lease (note “nbkny” email address below— *i.e.* National Bank of Kuwait, New York Branch), which would have generated a great deal of revenue for the Debtor.

**From:** Michael Carter <Michael.Carter@nbkny.com>

**Date:** Monday, 23 September 2019 at 13:22

**To:** Azeemeh Zaheer <azeemeh@naissancecapital.co.uk>, Lisa Walker <Lisa.Walker@nbkny.com>

**Subject:** RE: LOI

My primary concern is that the tenant determines when the commencement date is, presumably because they have zoning and building department approvals to complete as well as financing to arrange, which is understandable, however there does not appear to be an outside expiration date for the Commencement date. It appears they could tie up these space permanently without having to pay rent. I think you should have an outside date for Commencement.

13. The situation became so untenable that in September 2021, Debtor initiated a lawsuit against NBK.

14. In good faith, even during the pendency of this litigation, the Debtor was still trying to get tenants into the building and get NBK's approval to do so, so it would not claim additional breaches of loan agreements. On July 2, 2022, the Debtor sent NBK five leases for approval, which NBK did not approve.

15. The parties litigated for eleven (11) months until August 22, 2022, when they entered into a Confidential Settlement Agreement. The entire Confidential Settlement Agreement will be submitted to the Court *in camera* at the appropriate time, and the Debtor should be allowed to use it in this Adversary since the breach of that Settlement Agreement by NBK is not only actionable, but was also devastating to Debtor. Because NBK has a way of interpreting any action of the Debtor as one to breach or avoid some purported contractual obligation or other, when the reverse is entirely true, the Confidential Settlement Agreement has not been attached. NBK has prevented Debtor's successful performance under any and all agreements it has with NBK, including the Confidential Settlement Agreement.

16. The Confidential Settlement Agreement permitted a timeframe in which Debtor could sell the 2425 Building, and Debtor was successful in receiving a hard Letter of Intent dated January 17, 2023 to purchase the building from Caldwell Soames. A true and correct copy of that hard Letter of Intent is attached hereto as **Exhibit 2**. Again, while these negotiations were ongoing, NBK took actions which interfered with the continuation and closing of that transaction, including issuing a notice of foreclosure on March 29, 2023 in breach of the Confidential Settlement Agreement, which Debtor believes was done intentionally to prevent the sale. The sale would have cleared the Bank of Kuwait debt as it stood at that time and left great value for the other Plaintiffs. Debtor believes that Bank of Kuwait recognized that greater value and wanted to take it for itself by foreclosure in a “loan to own” gambit.

17. There are tremendous factual inaccuracies that NBK represents to courts and continues into these proceedings. For example, in its Motion to Dismiss the Debtor’s Bankruptcy, while it is absolutely true that temporary restraining orders were filed to attempt to prevent a foreclosure by NBK and its takeover of the 2425 Building, they were also **granted**. The facts presented that NBK had not allowed the Debtor to lease up the building to generate revenue and had killed two transactions that Debtor was working on that would have cleared NBK and left value for the Debtor and the other Plaintiffs.

18. Additionally, NBK posted for foreclosure in 2023 early, and against an extended grace period that a State Court had given Debtor, which chilled the bidding process and interest in the 2425 Building completely. No one wants to buy a building posted for foreclosure. Debtor believes that NBK knew this and did it on purpose to prevent the Debtor from successfully selling the property and paying off the loan, so NBK could foreclose and become the owner of the 2425 Building.



19. Not the least of the misstatements that NBK makes about the Debtor are those hard statements that the Debtor has not made any payments to NBK since March 6, 2021. This is stated both in paragraph 13 of NBK's Motion to Dismiss Debtor's Bankruptcy, and in NBK's Mr. Carter's Declaration (paragraph 8 of Declaration of Michael Carter).

20. The absolute opposite is true. Representatives of NBK have admitted in writing that the following substantial payments have been made to NBK well after March 6, 2021:

- a) \$801,509.42 paid by Debtor to NBK on August 27, 2022;
- b) \$80,000 paid by Debtor to NBK on April 18, 2023;
- c) \$80,000 paid by Debtor to NBK on May 10, 2023.

This is almost One Million Dollars (\$1,000,000) that not only does NBK not give credit to the Debtor for having made the payments, but again, it vilifies it, saying exactly the opposite that no payments (zero) have been made since March 6, 2021.

21. After NBK's disclosures of the situation created by the Confidential Settlement and the wrongful posting for foreclosure during an extension of that agreement, potential buyers of the property who would otherwise become good prospects to negotiate a sale with Debtor, became potential purchasers of the NBK Note and began negotiating with NBK. NBK materially breached the Confidential Settlement Agreement and interfered with these potential purchases and with these business relationships.

#### **IV. CAUSES OF ACTION**

##### **COUNT 1: BREACHES OF CONFIDENTIAL SETTLEMENT AGREEMENT**

22. Plaintiffs repeat and reallege the allegations set forth in all preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

23. Debtor and the other two Plaintiffs and Defendant reached a valid and enforceable agreement expressly set forth in the Confidential Settlement Agreement. Pursuant to the Confidential Settlement Agreement, Defendant agreed to keep the contents and terms of the parties' agreement completely confidential. Debtor dismissed its very good claims in the Lawsuit against Defendant in reliance upon Defendant's promises, including but not limited to, Defendant's promise to uphold the confidentiality obligations set forth in the Confidential Settlement Agreement.

24. Defendant breached the Confidential Settlement Agreement by disclosing its contents and terms to third parties in violation of the agreement's express confidentiality provisions. These disclosures prevented Debtor from closing on the sale of the 2425 Building and chilled the market for other buyers for Debtor's property. The same is true for NBK's wrongful, early filing of a notice of foreclosure on the 2425 Building, also in violation of the Confidential Settlement Agreement.

25. Debtor and all Plaintiffs hereby sue NBK for these breaches of the Confidential Settlement Agreement. The damages for these breaches are the amounts of money that the Debtor would have made from the contemplated transaction, which is in excess of Fifty Million Dollars (\$50,000,000).

## **COUNT 2: TORTIOUS INTERFERENCE WITH CONTRACT**

26. Plaintiffs repeat and reallege the allegations set forth in all preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

27. As alleged, NBK tortiously interfered with the SIBS International contract (**Exhibit 1**) and the Caldwell Soames Inc. contract (**Exhibit 2**), causing damages to the Debtor and the other two Plaintiffs in the net amounts of the contracts which, but for NBK's interference,

would have been paid to the Debtor and the other two Plaintiffs. These damages are excess of Fifty Million Dollars (\$50,000,000), for which the Debtor hereby sues NBK.

### **COUNT 3: TORTIOUS INTERFERENCE WITH BUSINESS RELATIONS**

28. Plaintiffs repeat and reallege the allegations set forth in all preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

29. After NBK's disclosures of the situation created by the confidential settlement and the wrongful posting for foreclosure during a judicial extension of the grace period contained in that agreement, potential buyers of the property who would otherwise have become good prospects to negotiate a sale with Debtor, became instead potential purchasers from NBK of the NBK note and began contacting and negotiating or attempting to negotiate with NBK instead of the Debtor.

30. This interference by NBK damaged Debtor in amounts to be determined after discovery, but which exceed the minimum jurisdictional limits of this Honorable Court.

### **COUNT 4: FRAUD AND FRAUDULENT INDUCEMENT/LENDER LIABILITY**

31. Plaintiffs repeat and reallege the allegations set forth in all preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

32. NBK never had any intention of living up to the Confidential Settlement Agreement. The Debtor was winning the lawsuit against NBK, so NBK induced the Debtor into dismissing its lawsuit and entering into the Confidential Settlement Agreement which NBK had no intention of living up to. This fraud works an estoppel against NBK (see Count 6, "ESTOPPEL"). Plaintiffs hereby sue NBK for the fraud and fraudulent inducement and alleges it constitutes the basis for an action for Lender Liability.

33. NBK knew at the time it entered into the Confidential Settlement Agreement it would deflect and tortiously interfere with the Debtor's attempts to sell the 2425 Building so NBK

would be able to foreclose on the building and take all of the value instead of just the value of the amounts otherwise owed at the time. The fraud, fraud in the inducement, lender liability, and subsequent interference for all of which Plaintiffs hereby sue NBK. These actions by NBK have damaged the Debtor and the other two Plaintiffs in an amount of at least Thirty Million Dollars (\$30,000,000).

#### **COUNT 5: FRAUDULENT CONVEYANCE**

34. Plaintiffs repeat and reallege the allegations set forth in all preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

35. The funds paid by the Debtor to NBK:

- a) \$801,509.42 paid Debtor to NBK on August 27, 2022;
- b) \$80,000 paid by Debtor to NBK on April 18, 2023; and
- c) \$80,000 paid by Debtor to NBK on May 10, 2023

were fraudulently induced by NBK and were payments for which the Debtor received nothing in return and constitute fraudulent conveyances in violation of U.S.C. § 544, 548, and 550 and TEX. BUS. & COMM. CODE §§ 24.001, *et seq.*, for which the Debtor hereby sues NBK to recover all such amounts.

#### **COUNT 6: ESTOPPEL**

36. Plaintiffs repeat and reallege the allegations set forth in all preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

37. NBK is estopped from claiming Debtor owes any more than the amount stated and agreed to in the Confidential Settlement Agreement because of its fraud and fraudulent inducement alleged previously.

### **COUNT 7: BUSINESS DISPARAGEMENT**

38. Plaintiffs repeat and reallege the allegations set forth in all preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

39. The posting of the 2425 Building during any negotiation periods and/or the extended grace period when actual buyers were moving toward concluding a deal and when other potential buyers were expressing interest in the 2425 Building, constituted business disparagement against the Debtor for which Debtor hereby sues NBK. The damages are the net amount of money the Debtor would have received in the sales had they occurred.

### **COUNT 8: BREACH OF GOOD FAITH AND FAIR DEALING**

40. Plaintiffs repeat and reallege the allegations set forth in all preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

41. Every contract has a duty of good faith and fair dealing engrafted upon it, especially in a lender/borrower relationship, and even more so when the lender is based in the State of New York as NBK is.

42. NBK breached its duty of good faith and fair dealing by:

- a) Inducing Plaintiffs to dismiss their State Court lawsuit;
- b) Inducing Plaintiffs to enter into the Confidential Settlement Agreement;
- c) Tortiously interfering with Debtor's performance under the Confidential Settlement Agreement;
- d) Tortiously interfering with third-party contracts;
- e) Not approving tenant leases or contracts for sale; and
- f) deflecting buyers so Debtor could not sell the 2425 Building.

43. Plaintiffs hereby sue NBK for breach of duty of good faith and fair dealing. The damages are for the value of the amounts that would have been recovered in the state court litigation and/or the value of the deals lost for leases and/or sales of the 2425 Building.

#### **COUNT 9: UNJUST ENRICHMENT**

44. Plaintiffs repeat and reallege the allegations set forth in all preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

45. If NBK is allowed to foreclose on the 2425 Building it will make an unconscionable profit and succeed in its “loan to own” gambit. The amount of its unjust enrichment for which Plaintiffs hereby sue NBK is the difference between what NBK would have been owed (but for its breaches of the Confidential Settlement Agreement) under the Confidential Settlement Agreement and the true value of the building, for which Plaintiffs hereby sue NBK.

#### **COUNT 10: ATTORNEYS’ FEES**

46. Plaintiffs repeat and reallege the allegations set forth in all preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

47. Plaintiffs hereby sue NBK for their reasonable and necessary attorneys’ fees under breach of contract and under any statutory or common law right to recover same.

#### **PRAYER**

WHEREFORE, premises considered, Plaintiffs pray that Defendants be cited to appear herein as provided by law and that upon hearing:

1. NBK not be allowed to foreclose on the 2425 Galleria Building;
2. Plaintiffs recover their damages and attorneys’ fees as alleged.

Dated: September 19, 2023

Respectfully submitted,

**HAYWARD PLLC**

By: /s/ Melissa S. Hayward

Melissa S. Hayward

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(972) 755-7100 (telephone/facsimile)

**PROPOSED COUNSEL FOR THE DEBTOR**

By: /s/ James Q. Pope

James Q. Pope

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(281) 657-9693 Facsimile

**COUNSEL FOR PLAINTIFFS ALI CHOUDHRI AND  
NAISSANCE GALLERIA LLC**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing was filed with the Court and served via the Court's CM/ECF system upon all of the parties registered to receive such notice on September 19, 2023.

/s/ Melissa S. Hayward

Melissa S. Hayward

## EXHIBIT 2



**CAUSE NO. 2023-22748**

GALLERIA 2425 OWNER, LLC,	§	IN THE DISTRICT COURT OF
	§	
<i>Plaintiff,</i>	§	
v.	§	HARRIS COUNTY, TEXAS
	§	
NATIONAL BANK OF KUWAIT,	§	
S.A.K.P., NEW YORK BRANCH,	§	
	§	
<i>Defendant.</i>	§	281ST JUDICIAL DISTRICT

**PLAINTIFF'S SIXTH AMENDED PETITION**

Galleria 2425 Owner, LLC ("*Plaintiff*") files this Sixth Amended Petition against Defendant National Bank of Kuwait S.A.K.P., New York Branch (individually as "*NBK*", or collectively as "*Defendants*"), and Azeemeh Zaheer (individually as "*Zaheer*", or collectively as "*Defendants*") and, in support, submit the following:

**I.**  
**DISCOVERY PLAN**

1. Discovery should be conducted pursuant to Level 2 of Rule 190.3 of the Texas Rules of Civil Procedure.

**II.**  
**PARTIES**

2. Galleria 2425 Owner, LLC ("*Plaintiff*") is a limited liability company doing business in Texas and is the owner of the building located at 2425 West Loop S., Houston, Texas ("*2425 Building*").

3. National Bank of Kuwait, S.A.K.P., New York Branch (“**NBK**”) is a banking corporation organized under the laws of Kuwait, acting through its New York Branch. NBK HAS APPEARED WITH COUNSEL.

4. Azeemeh Zaheer (“**Zaheer**”), is an individual who resides, and may be personally served at 5513 Kansas Street, Houston, Texas 77007.

### **III.** **INTRODUCTION**

5. This suit was originally filed against NBK, a party who has been shown to be willing to engage in bad faith actions, and who repeatedly attempts to make outside deals with third parties, specifically to deprive the plaintiff of its ownership interest in the 2425 Building in any way it can.

6. Plaintiff, Galleria 2425 Owner, LLC, filed bankruptcy to preserve the asset, which NBK vehemently opposed, and fought to have dismissed from the bankruptcy court. However, at the hearing on NBK’s motion to dismiss, Plaintiff was successful in defending against dismissal, and the bankruptcy case moved forward.

7. Plaintiff promptly proposed a plan in the bankruptcy court, which was characterized as a “really smart” plan that “check[ed] all the boxes” for plan confirmation, according to Judge Lopez.

8. Then, after NBK lost its motion to dismiss, it filed a letter in the bankruptcy case (Document 77) which made the bankruptcy court aware of litigation that was irrelevant to Galleria 2425 Owner, LLC’s pursuit of its ongoing bankruptcy case. The state court litigation referenced by NBK is, in the words of Judge Lopez “an unrelated case involving Ms. Zahire [sic] and Naissance and Mr. Choudhri”. The case is about a dispute over control of an entity called

Naissance Galleria, LLC, which is an entity that provided a mezzanine loan to Galleria 2425 Owner, LLC's sole member and is party to an intercreditor agreement with NBK. Upon information and belief, certain of the investors in Naissance Galleria LLC are substantial clients of or investors in NBK. Naissance Galleria LLC was also a party to the very settlement agreement with NBK at issue in this suit. Importantly, Naissance Galleria, LLC does not have any membership in, or control over Galleria 2425 Owner, LLC, or any of its members or managers.

9. Notably, the state court, in the litigation referenced in NBK's letter to Judge Lopez, did issue a Temporary Injunction, which maintained the status quo of Choudhri's management and control of Naissance Galleria, LLC, but limited any actions that could be taken by Choudhri on behalf of Naissance Galleria, LLC to only those which are also approved by Zaheer, until a trial resolves the issue once and for all.

10. After the Temporary Injunction was in place establishing Choudhri's control of Naissance Galleria, LLC, Zaheer directed her counsel, while purporting to act for Naissance Galleria, LLC, to appear at two separate hearings in the bankruptcy court, on or about October 12, 2023 and November 1, 2023, and on the eve of a November 1 status conference filed an emergency motion in the bankruptcy court, requesting for Judge Lopez to rule against the state court and find that Zaheer had control of, and could act for Naissance Galleria, LLC. Judge Lopez thereafter sua sponte dismissed the bankruptcy case during the November 1, 2023 status conference.

11. When the parties to the state court litigation returned to appear before Judge Manor on November 13, 2023, Judge Manor confirmed that her Temporary Injunction did not give Zaheer any right to act as the manager of Naissance Galleria, LLC, and confirmed that Choudhri was in control, subject to Zaheer's approval during the pendency of trial.

12. All of these actions, gave rise to Judge Lopez's serious concerns about the ability to move forward with the bankruptcy case without resolution in the state court action. Judge Lopez stated, in the Status Conference held on November 1, 2023, the following:

"I don't have anything to qualify it in state court issues. I don't know. There's just a lot of confusing stuff, and my gut tells me that I need to dismiss this case and let you all go figure this out in State Court, because there's not enough here, and there's real concerns that I have..."

13. However, since Naissance Galleria, LLC has no ownership or control over the Plaintiff or any of its members or managers, these filings and appearances are just a smoke screen. The fact that they were also filed in violation of the Temporary Injunction not only makes these actions unlawful, but there could be no other purpose aside from attempting to cause the dismissal of the bankruptcy case brought by Galleria 2425 Owner, LLC, which is an action that, logically, would be counter to the company's interests.

14. In its letter inviting the Naissance dispute and Ms. Zaheer's counsel into the bankruptcy proceedings, NBK cleverly attempts to confuse the court by implying that Ms. Zaheer had control of Naissance Galleria, LLC because the order says that management decisions could not be made without her approval. Ms. Zaheer's counsel then accepted NBK's invitation to create confusion and disruption, appearing at the October 13 emergency status conference purporting to represent Naissance Capital LLC.

15. As this Court has handled cases related to Galleria 2425 Owner, LLC for years, it is well aware that Ms. Zaheer has been entirely absent from any of these proceedings until on or about July 5<sup>th</sup>, 2023, when Naissance Galleria, LLC appeared, allegedly controlled by Azeemeh

Zaheer, before this Court's ancillary docket, attempting to stop the foreclosure by NBK, at which hearing this Court itself questioned the absence of Ms. Zaheer over the last several years.

16. Ms. Zaheer signed the assignment giving control over Naissance Galleria, LLC to Mr. Choudhri on July 3<sup>rd</sup>, 2020. Ms. Zaheer did not make any claims of control over Naissance Galleria, LLC, did not attempt to object to Mr. Choudhri's management of the company for three (3) years. These allegations are absurd, as Ms. Zaheer has been entirely absent from the company's management for years.

17. As a result of this conspiracy by the defendants, the emergency status conference requested by NBK resulted in the dismissal of the bankruptcy case.

18. What's interesting is that, if Ms. Zaheer was sincerely the manager of Naissance Galleria, LLC, she would not have worked to have the bankruptcy case dismissed.

19. Such actions, if they had been taken by a legitimate manager for Naissance Galleria, LLC, would be a breach of fiduciary duty to the company, unless there was a back room deal NBK.

20. Now that NBK has re-posted the 2425 Building for foreclosure, Plaintiff will suffer irreparable harm as a result of the defendants' actions.

#### **IV. FACTUAL BACKGROUND**

21. In 2018, NBK loaned certain funds to Plaintiff. NBK has continually interfered with the Plaintiff's ability to lease the 2425 Building to produce revenue and Plaintiff's ability to sell the 2425 Building to pay NBK off. Every time NBK has so interfered, it has then blamed the Plaintiff for its inability supposedly to meet some of the loan terms.

22. For example, in January 2021, Plaintiff Ali Choudhri, who is vilified by NBK in various pleadings, had serious parties interested in acquiring interests in the building more than enough to clear NBK's debt. A letter dated January 15, 2021, from SIBS International, and two purchase contracts would have paid off not only NBK, but left the Plaintiff with a great deal of value. **NBK, rather than facilitate this sale, issued a formal notice of default to the Plaintiff and its intent to accelerate the loan on June 29, 2021,** while the SIBS International deal was in progress, killing that deal.

23. **The same was true with regard to NBK's interference with the Plaintiff's attempt to lease space in the building to provide revenue so it could operate and make loan payments.** By August 2021, this situation had become untenable due to NBK's refusal to approve new tenants and new leases, prompting the Plaintiff, on August 13, 2021, to send NBK a detailed letter regarding lease-up and renewal prospects for discussions, none of which, it seemed NBK would approve.

♦ **Healthcare Service Organization**

- •Size: 130,000+ RSF – large client requirement in their preliminary planning stages: •Industry: Healthcare Service Organization •Type of use: Administration Offices •Direct/Sublease •Commencement date: Q3/2023 •Term:5-10 yrs. They are specifically VERY interested in amenities available, for example: deli, gym, day care, conference center (# of seats), training center (# of seats).

♦ **Invesco**

- We met with the team twice and are actively pursuing them for 2425. They are interested in a 157-month lease term for 208,830 SF of Net Rental Area.

♦ **Financial Services Firm**

- Office •AREA: West Houston (610 West, Hwy 290, Beltway 8) •SPACE: Open Concept •SIZE: Approximately 20,000 – 25,000 rsf •PARKING: 5/1000 ratio •OCCUPANCY: Late 2Q22/Early3Q22 •TERM: 36-60 months with

renewal options •This tenant is currently at 24 Greenway on their top floor and have been looking at other A buildings.

- ♦ **Beyond Finance**

- We are discussing a 68-month lease term for +/- 40,000 rentable SF.

- ♦ **Banco Affirme**

- We submitted a 64-month lease term for 4,545 SF of Net Rental Area.

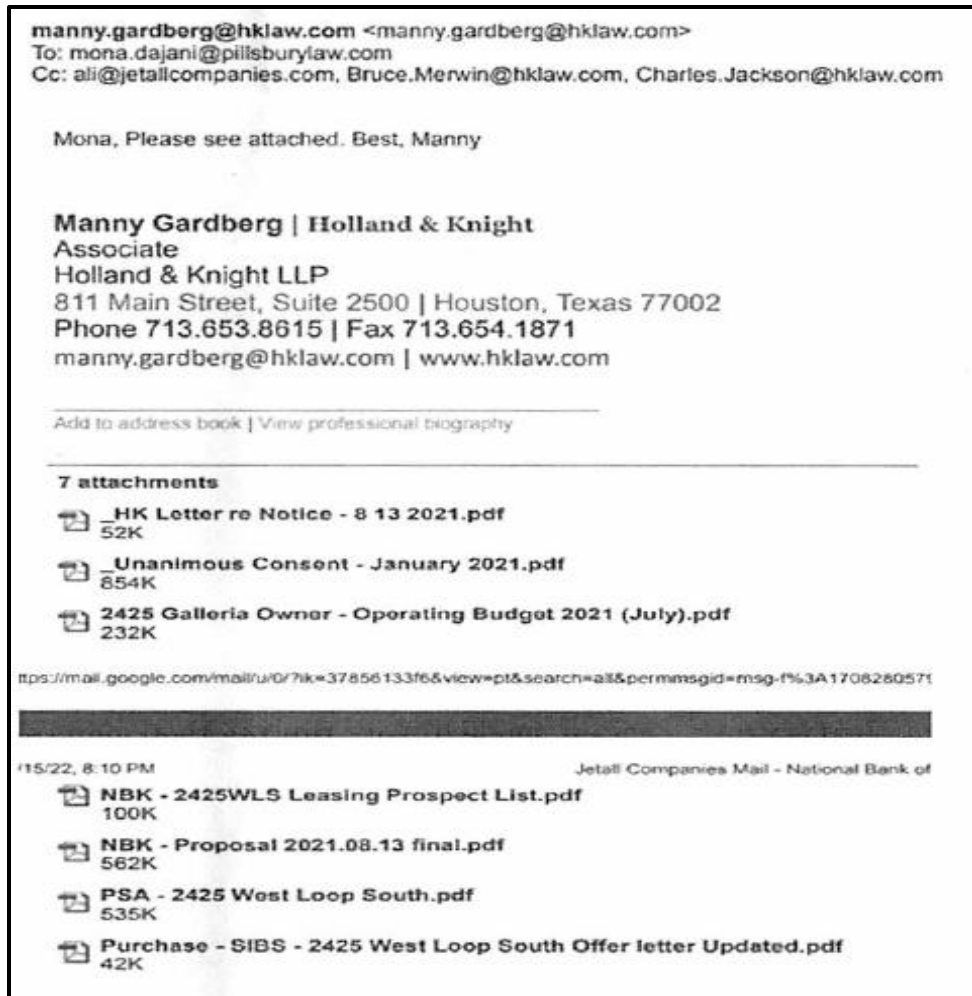
- ♦ **Walls Bank (existing tenant)**

- Renew 3,054 SF of rental space for 60-month term starting January 1, 2022.

- ♦ **Others (working directly with ownership)**

- ResMed (<https://www.resmed.com/en-us/>), interested in the entire building, working directly with Dr. Peter Farrell, Founder and Chairman
  - Healthstore Holdings (<https://www.healthstore.com/>), interested in a 15-year term with 80,000 SF in phase 1 and 75,000 SF in 12 months as phase 2.
  - Immunicom (<https://immunicom.com/>), interested in at least two full floors, moving HQ from San Diego, CA

24. Below is an August 16, 2021 email from counsel for the Plaintiff to NBK forwarding multiple leases for approval that **NBK had failed to approve or even respond to.**



25. This lack of approval, or finding obstacles to approve, was not new. In September 2019, Related Group had reached out to lease the parking garage located at the 2425 Building to be used for overflow, for parking up to 110 spaces. **NBK's authorized representative Michael Carter would not approve this lease** (note "nbkny" email address below— *i.e.* National Bank of Kuwait, New York Branch), which would have generated a great deal of revenue for the Plaintiff.



**From:** Michael Carter <Michael.Carter@nbkny.com>

**Date:** Monday, 23 September 2019 at 13:22

**To:** Azeemeh Zaheer <azeemeh@naissancecapital.co.uk>, Lisa Walker <Lisa.Walker@nbkny.com>

**Subject:** RE: LOI

My primary concern is that the tenant determines when the commencement date is, presumably because they have zoning and building department approvals to complete as well as financing to arrange, which is understandable, however there does not appear to be an outside expiration date for the Commencement date. It appears they could tie up these space permanently without having to pay rent. I think you should have an outside date for Commencement.

26. The situation became so untenable that in September 2021, Plaintiff initiated a lawsuit against NBK.

27. In good faith, even during the pendency of this litigation, the Plaintiff was still trying to get tenants into the building and get NBK's approval to do so, so it would not claim additional breaches of loan agreements. **On July 2, 2022, the Plaintiff sent NBK five leases for approval, which NBK did not approve.**

28. *The parties litigated for eleven (11) months until August 22, 2022, when they entered into a Confidential Settlement Agreement.* **NBK has prevented Plaintiff's successful performance under any and all agreements it has with NBK, including the Confidential Settlement Agreement.**

29. The Confidential Settlement Agreement permitted a timeframe in which Plaintiff could sell the 2425 Building, or seek refinancing, and Plaintiff was successful in obtaining a buyer for the building. Upon closing this transaction, Plaintiff would have retained a forty-five (45%) ownership interest in the 2425 Building. However, **NBK again took actions which interfered with the continuation and closing of that transaction, including issuing a notice of foreclosure**

**on March 29, 2023 in breach of the Confidential Settlement Agreement, which Plaintiff believes was done intentionally to prevent the sale.** The sale would have cleared the NBK debt as it stood at that time and left great value for the Plaintiff. Plaintiff believes that NBK recognized that greater value and wanted to take it for itself by foreclosure in a “loan to own” gambit.

30. There are tremendous factual inaccuracies that NBK represents to state and federal courts and they continue into these proceedings. For example, in its Motion to Dismiss the Plaintiff’s Bankruptcy, while it is absolutely true that temporary restraining orders were filed to attempt to prevent a foreclosure by NBK and its takeover of the 2425 Building, NBK fails to note that such requests were also **granted by this Court** based upon showings that **NBK had not allowed the Plaintiff to lease up the building to generate revenue, and had killed at least two transactions that Plaintiff was working on that would have cleared NBK and left value for the Plaintiff.**

31. Additionally, NBK posted for foreclosure in 2023 early, and against an extended grace period that this Court had given Plaintiff, which silenced the bidding process and interest in the 2425 Building completely. No one wants to buy a building posted for foreclosure. **Plaintiff believes that NBK knew this and did it on purpose to prevent the Plaintiff from successfully selling the property and paying off the loan, so NBK could foreclose and take the 2425 Building for itself so it can open a Houston location.**

32. After NBK’s disclosures of the situation created by the Confidential Settlement and the wrongful posting for foreclosure during an extension of that agreement, potential buyers of the property who would otherwise become good prospects to negotiate a sale with Plaintiff, became potential purchasers of the NBK Note and began negotiating with NBK. NBK interfered with

these potential purchases and with these business relationships. At least the following were interfered with in this fashion:

- a) Globix Investment,
- b) Ironwood Commercial Realty,
- c) Shah Firm, LLC, and
- d) Jeb Brown Law.

**B. Azeemeh Zaheer Decides She Wants the Building.**

33. On June 26, 2023, Zaheer, filed a lawsuit in the name of Naissance Galleria, LLC (“*Naissance*”), despite having assigned control over such entity several years prior., in the 157<sup>th</sup> Judicial District Court in Harris County, Texas referenced by case number 2023-39006 against Brad Parker (“*Parker*”) as an initial step in Zaheer’s pursuit of a hostile takeover of the 2425 Building.

34. On July 5, 2023, Zaheer, again acting in the name of Naissance, filed a second lawsuit in the 129<sup>th</sup> Judicial District Court in Harris County, Texas referenced by case number 2023-41091 against Parker and NBK, to further her hostile takeover attempt of the 2425 Building. Zaheer sought injunctive relief, but that request for an emergency temporary restraining order was denied.

35. On or about July 5, 2023, Plaintiff commenced a Chapter 11 bankruptcy proceeding in the Southern District of Texas, referenced by case number 23-60036. NBK sought to dismiss the bankruptcy proceeding, but after a full day evidentiary hearing its motion to dismiss was denied on September 26, 2023. The Chapter 11 Plan could have been approved and would have substantially reduced the value of NBK’s secured debt. So, after its motion to dismiss was denied,

NBK changed tactics and decided to invite Ms. Zaheer and her counsel into the bankruptcy case to cause confusion and disruption. NBK decided it could not allow its debt to be restructured under the bankruptcy code, just as it had decided it could not allow the prior sales of the building that had been lined up by Plaintiff.

**C. Azeemeh Zaheer is a False Representative of Naissance.**

36. Azeemeh Zaheer at one time had a business and personal relationship with Ali Choudhri, both of which appeared to have ended mutually for a time. Azeemeh Zaheer sought injunctive relief in the 80th Judicial District Court for Harris County against Naissance Galleria, LLC, which was a mezzanine lender to an LLC (“*LLC*”) two steps up in the chain.

37. Azeemeh Zaheer had signed, as the authorized representative of the Managing Member of Naissance Galleria, LLC an Assignment of the management rights of that LLC to Ali Choudhri. In response, Mr. Choudhri stepped into Naissance’s shoes, covered its expenses, and did a miraculous job of negotiating the aforementioned settlement with NBK after the Assignment. Azeemeh Zaheer made this assignment for a number of reasons, but most of them stemmed from her ineffective management of the building and her fear of exposure to NBK and certain individuals affiliated with NBK because of her poor performance.

38. After Mr. Choudhri received the Assignment and had negotiated the successful settlement with NBK and the building looked as if it might succeed (a period of years), Azeemeh Zaheer decided she wanted to misappropriate the value that Mr. Choudhri had just preserved and to an extent had just created. First, she claimed the Assignment was invalid and sought and received a Temporary Injunction, on September 21, 2023, from the 80th Judicial District Court in Harris County. This Temporary Injunction basically only created a stalemate with respect to the management of Naissance Galleria, LLC to preserve the status quo until a trial in January. Mr.

Choudhri is still the manager of Naissance Galleria, LLC, not Azeemeh Zaheer, although she did have some approval rights under the injunction. Mr. Choudhri, as the manager of Naissance Galleria LLC and is only required to obtain approval from Zaheer for his actions. Zaheer DOES NOT have any control of the entity. Moreover, this was confirmed at a hearing on November 13, 2023 before Judge Manor in the 80<sup>th</sup> Judicial District Court.

**D. Azeemeh Decides to Conspire with NBK So It Could Foreclose On the Building.**

39. After the September 21, 2023 entry of the Temporary Injunction, some ironic, if not strange, events start taking place with respect to Ms. Zaheer and the Plaintiff. First, it is against Azeemeh Zaheer and Naissance's financial interests if NBK forecloses.

40. Second, on information and belief, Zaheer caused a copy of the Temporary Injunction Entered on September 21, 2023 by the 80th Judicial District Court in Harris County to be sent to counsel for NBK, who used it to interfere with the Plaintiff's ability to reorganize under the bankruptcy code and confirm a chapter 11 plan.

41. Third, Zaheer's directed her counsel to appear without any forewarning at the October 12, 2023 status conference, in the Bankruptcy Court about the plan, claiming Azeemeh Zaheer now is the manager of Naissance Galleria, LLC and they have been hired by her to represent Naissance Galleria, LLC, all by virtue of the Temporary Injunction.

6	MR. DRINNON: Okay. I represent Mr. Abdullatif in	
7	other cases but not this one. I tend to get hired because I	
8	have sued Mr. Choudhri successfully in numerous	
9	jurisdictions and cases . . . .	

**E. Zaheer Changes Sides to Make a Deal with the NBK**

42. Progressively, Azeemeh Zaheer's behavior becomes more inexplicable as she: (1) takes the position that the Temporary Injunction put her in charge of Naissance (it did not);<sup>1</sup> (2) that Naissance Galleria, LLC could or had already become the owner of the Debtor building (2425 Galleria Owner, LLC, Plaintiff herein) and as the new owner, they did not wish to pursue claims asserted in the bankruptcy case against NBK by Plaintiff and Naissance for breaching the settlement agreement and would want to take the bankruptcy in another direction.

43. This created an environment of confusion for the Bankruptcy Court, which was by Defendants' design, and it was a concerted effort by the Defendants to have the bankruptcy case dismissed, allowing NBK to foreclose. Defendant NBK would not be impeded by the bankruptcy and Zaheer could tell Mr. Choudhri: "I will not go along with your reorganization plan unless you pay me millions of dollars" while making a deal with NBK to block the Plan of Reorganization in the event no payment was received from Mr. Choudhri.

44. The Defendants are working in concert, to achieve the same end. Specifically, the Defendants have devised, and intended to devise, a scheme or artifice to seize the 2425 Building by any means necessary. Defendants will stop at nothing to see the Plaintiff lose possession of the 2425 Building, and upon information and belief, the driving force behind their efforts is Osama Abdullatif ("***Abdullatif***").

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<sup>1</sup> At a hearing had in the issuing court (the 80th Judicial District Court) on Monday, November 13, 2023, the Court confirmed her Temporary Injunction Order had not turned control of Naissance over to Zaheer and Zaheer had no authority to authorize attorneys to make the filing and take the action they had on behalf of Naissance Galleria, LLC in the Bankruptcy.

45. Defendants' scheme has involved false representations of material information, including but not limited to misrepresentations concerning the Plaintiff and the purpose and effects of the Temporary Injunction.

46. On November 29, 2023, Azeemeh appeared, through counsel, at an emergency hearing where Naissance Galleria, LLC's Application for Temporary Restraining Order was being heard before the Harris County District Court Ancillary Judge. Naissance Galleria, LLC sought an emergency temporary restraining order, to enjoin NBK from proceeding with the foreclosure sale scheduled for December 5, 2023, in an effort to protect its interests in the 2425 Building. However, Azeemeh, through counsel, argued against entry of the temporary restraining order, and worked alongside NBK to ensure its denial, leaving the 2425 Building subject to foreclosure. Azeemeh's stance is bizarre, considering Azeemeh, improperly acting as manager for Naissance Galleria, LLC, sought an emergency temporary restraining order to stop NBK from foreclosing on the 2425 Building in July 2023<sup>2</sup>.

**F. False Representations by Zaheer's Agents are Successful in Getting Plaintiff's Bankruptcy Dismissed.**

47. The Bankruptcy Court scheduled a Status Conference for the Plaintiff's Bankruptcy Case for November 1, 2023. Azeemeh's agents, on October 31, 2023, only hours before the Status Conference, filed an Emergency Motion. This Motion contained many misrepresentations, some of which follow:

- a) Even though Zaheer had no right to or standing necessary to file anything on behalf of Naissance, and the Temporary Injunction gave Zaheer no such rights, statements were made in their Emergency Motion directly to the contrary, stating Azeemeh Zaheer was in, Choudhri was out.

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<sup>2</sup> See Cause No. 2023-41091: Naissance Galleria LLC v. National Bank of Kuwait S.A.K.P., New York Branch, transcript from the July 5, 2023 Temporary Restraining Order hearing is attached.

- b) The filing stated flatly at one point that the Assignment had been found to be forged – it had not.
- c) The filing stated that, because of the Temporary Injunction, Naissance was now controlled exclusively by Zaheer, who could make Naissance become the Owner of the Bankrupt. (The issuing court on Monday, November 13, 2023, ruled from the bench it said no such thing.)

These misrepresentations had the desired effect, and the Bankruptcy Court dismissed the Bankruptcy, green-lighting NBK to foreclose.

**G. Abdullatif is Choudhri's Competitor and Wants to Ruin Him.**

48. Choudhri has been in the real estate investment and management business for the last 20 years. The regular course of Choudhri's business involves numerous aspects of real estate development. These activities include real estate and business acquisitions and dispositions, seeking and obtaining financing, and developing and managing commercial and residential properties. He regularly raises capital for these activities through the issuance of equity and/or debt. It is also within his normal course of business to enter into transactions with borrowers, lenders, and investors to support the purchase, development, and operations of real estate properties.

49. Choudhri at times conducts his real estate investment and management business through the use of special purpose entities, such as Plaintiff Galleria Owner 2425, LLC. Choudhri runs a management company, Jetall ("*Jetall*"), to provide employees and management services to entities for purposes of operating real estate investments.

50. Abdullatif has provided financing for numerous third-party claims against Choudhri, including interfering with Choudhri's final divorce proceedings in both Pakistan Supreme Court and Harris County District Court by soliciting Choudhri's ex-wife for her legal claims against Choudhri and/or his entities and to gain access to Choudhri's protected financial



disclosures. Abdullatif has filed several dozen Lis Pendens against Choudhri, and his properties, and has sponsored litigation against Choudhri in several dozen cases.

51. Upon information and belief, Abdullatif is also financing the litigation expenses of Zaheer against Choudhri in the dispute over the building owned by Plaintiff. Abdullatif, Zaheer, and others have all agreed to the enterprise course of action aimed at destroying Choudhri's business, including taking possession of the 2425 Building.

52. On more than one occasion, Abdullatif resorted to violence and threats against Choudhri and/or his family, friends, and associates. Mr. Choudhri had another real estate venture involving an entity called Dalio. Abdullatif was present at Dalio's foreclosure proceeding, where a friend accompanying him assaulted one of Choudhri's lawyers. On another occasion, Abdullatif and his associates used firearms to hold Choudhri, and his associates, hostage.

53. Abdullatif also formed an association with others in his illegal efforts to destroy Choudhri's business. These individuals include but are not limited to Chris Wyatt, former paralegal of Jetall ("**Wyatt**").

54. Wyatt was hired by Jetall in 2019. In the course of his employment, Wyatt oversaw legal and litigation matters for Jetall. He was provided confidential information concerning Jetall's and its client's real estate transactions, finances and debt leverage on properties, and litigation management strategies. As a Jetall representative, Wyatt was regularly involved in and provided access to privileged information and communications, including information subject to attorney-client and work product privileges. Wyatt signed a non-disclosure agreement at the beginning of his employment prohibiting him from disclosing confidential information and requiring him to return all files upon his termination.

55. Wyatt's employment at Jetall ended in December 2020. When he left Jetall, Wyatt stole corporate files including electronic communications and secretly recorded privileged phone communications between Choudhri and his attorneys.

56. Jetall obtained a restraining order in January 2021 enjoining Wyatt from disclosing or divulging confidential information obtained through his course of employment with Jetall.

57. Abdullatif met with Wyatt before, during and after Wyatt's departure from Jetall. Abdullatif, directly and through his lawyers, received confidential and privileged information from Wyatt. This information included but is not limited to illegal recordings of Choudhri's conversations with attorneys.

58. Upon information and belief, Abdullatif and his lawyers were aware that Wyatt was a former employee of Jetall who was involved in confidential and privileged communications and that a restraining order was entered enjoining Wyatt from disclosing confidential information.

59. Abdullatif and his agents have used the illegally obtained information and recordings as part of Abdullatif's scheme to destroy Choudhri's business. Abdullatif retained Wayne Dolcefino ("***Dolcefino***") as a "consultant" to publish on the internet a series of hit pieces on Choudhri. Dolcefino advertises that his services included "litigation support," and Abdullatif has utilized Dolcefino in the course of his numerous lawsuits asserted against Choudhri and his businesses.

60. Information illegally obtained from Wyatt is included in many of Dolcefino's hit pieces. Dolcefino continues to publish these hit pieces on the internet, including videos posted in May 2023.

61. Abdullatif has made several false claims against his competitor, Choudhri, in many ways, two of the most egregious being:

- a) Hiring Dolcefino to create video “hit pieces” about Choudhri, his business, his marital status, and inappropriate character based upon his actions during that marital status. This video contained “over the top” falsehoods, e.g. that he was still married and had been for years. It was commercial speech designed to designate a competitor (Choudhri) and give Abdullatif a competitive advantage, and was introduced into interstate commerce by release to major television (broadcast and cable) networks and by placing on the internet where it still resides today, making it available to the potential customers and lenders that are competed for; and
- b) Placing multiple improper Lis Pendens on the record title to properties owned by Choudhri or his business entities, which created a double negative effect on Choudhri’s ability to conduct business by hampering his ability to find new lenders or renewing existing loans because the security for them was impaired and making it impossible to sell those properties to raise new capital on his own. These Lis Pendens were “over the top” misrepresentations because they were illegal and did not assert valid interests in the subject properties. The Lis Pendens were also introduced into interstate commerce because they were filed of record and were available “online” over the internet to any potential customer for commercial real estate in the Houston area.

## V.

### **CAUSES OF ACTION**

#### **COUNT 1: BREACHES OF CONFIDENTIAL SETTLEMENT AGREEMENT**

62. Plaintiff repeats and realleges the allegations set forth in all preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

63. Plaintiff and NBK reached a valid and enforceable agreement expressly set forth in the Confidential Settlement Agreement. Pursuant to the Confidential Settlement Agreement, NBK agreed to keep the contents and terms of the parties’ agreement completely confidential. Plaintiff dismissed its very good claims in the Lawsuit against NBK in reliance upon NBK’s promise to uphold the confidentiality obligations set forth in the Confidential Settlement Agreement.

64. NBK breached the Confidential Settlement Agreement by disclosing its contents and terms to third parties in violation of the agreement’s express confidentiality provisions. These

disclosures prevented Plaintiff from closing on the sale of the 2425 Building and chilled the market for other buyers for Plaintiff's property. The same is true for NBK's wrongful, early filing of a notice of foreclosure on the 2425 Building, also in violation of the Confidential Settlement Agreement.

65. Plaintiff hereby sues NBK for these breaches of the Confidential Settlement Agreement, including monetary damages for such breaches and injunctive relief preventing NBK from foreclosing on the building because Civil Practices & Remedies Code Section 65.011 authorizes injunction relief when: 1) the applicant is entitled to a writ of injunction under the principles of equity and the laws of Texas relating to injunctions. Texas Civil Practices & Remedies Code Section 65.011(3); See *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 210 (Tex. 20002); and 2) when irreparable injury to real or personal is threatened, irrespective of any remedy of law. Tex. Civ. Practice & Remedies Code Section 65.011(5).

66. Plaintiff requests injunctive relief as allowed pursuant to *CytoGenix, Inc. v. Waldroff*, 213 S.W.3d 479, 487 (Tex.App.—Houston, [1<sup>st</sup> Dist.] 2006, pet. denied), and *L Series, L.L.C. v. Holt*, 571 S.W.3d 864, 876 (Tex.App.—Fort Worth 2019, pet. denied) due to Defendant's breach.

## **COUNT 2: TORTIOUS INTERFERENCE WITH CONTRACT**

67. Plaintiff repeats and realleges the allegations set forth in all preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

68. As alleged, NBK tortiously interfered with the SIBS International contract and the Caldwell Soames Inc. contract, causing damages to the Plaintiff in the net amounts of the contracts which, but for NBK's interference, would have been paid to the Plaintiff.

69. Zaheer has tortiously interfered with Plaintiff's contract with NBK, and abused process by interfering in Plaintiff's bankruptcy proceeding.

**COUNT 3: TORTIOUS INTERFERENCE WITH PROSPECTIVE RELATIONS**

70. Plaintiff repeats and realleges the allegations set forth in all preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

71. After NBK's disclosures of the situation created by the confidential settlement and the wrongful posting for foreclosure during a judicial extension of the grace period contained in that agreement, potential buyers of the property who would otherwise have become good prospects to negotiate a sale with Plaintiff, became instead potential purchasers from NBK of the NBK note and began contacting and negotiating or attempting to negotiate with NBK instead of the Plaintiff. NBK interfered with these potential purchasers and with these potential business relationships. At least the following were interfered with in this fashion:

- a) Globix Investment,
- b) Ironwood Commercial Realty,
- c) Shah Firm, LLC, and
- d) Jeb Brown Law.

72. Zaheer have interfered with the Plaintiff's relationship with NBK and/or entered into a relationship with Zaheer and their antics caused the dismissal of Plaintiff's Chapter 11 bankruptcy proceeding, which was otherwise proceeding to a cram-down restructuring under Chapter 11 of the bankruptcy code

73. This interference by the Defendants damaged Plaintiff in amounts to be determined after discovery, but which exceed the minimum jurisdictional limits of this Honorable Court.

**COUNT 4: COMMON LAW FRAUD/LENDER LIABILITY**

74. Plaintiff repeats and realleges the allegations set forth in all preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

75. NBK never had any intention of living up to the Confidential Settlement Agreement. The Plaintiff was winning the lawsuit against NBK, so NBK induced the Plaintiff into dismissing its lawsuit and entering into the Confidential Settlement Agreement which NBK had no intention of living up to. This fraud works an estoppel against NBK (see Count 6, “ESTOPPEL”). Plaintiff hereby sues NBK for fraud and fraudulent inducement and alleges it constitutes the basis for an action for Lender Liability.

76. NBK knew at the time it entered into the Confidential Settlement Agreement it would deflect and tortiously interfere with the Plaintiff’s attempts to sell the 2425 Building so NBK would be able to foreclose on the building and take all of the value instead of just the value of the amounts otherwise owed at the time. Plaintiff accordingly sues NBK for its fraud, fraud in the inducement, lender liability, and subsequent interference with the settlement agreement. Plaintiff seeks benefit of the bargain damages for the fraud related to the enforceable contract. Plaintiff requests injunctive relief as allowed pursuant to *CytoGenix, Inc. v. Waldroff*, 213 S.W.3d 479, 487 (Tex.App.—Houston, [1<sup>st</sup> Dist.] 2006, pet. denied), and *L Series, L.L.C. v. Holt*, 571 S.W.3d 864, 876 (Tex.App.—Fort Worth 2019, pet. denied) due to Defendant’s breach.

**COUNT 5: FRAUDULENT TRANSFER**

77. Plaintiff repeats and realleges the allegations set forth in all preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

78. The funds paid by the Plaintiff to NBK:

a) \$801,509.42 paid Plaintiff to NBK on August 27, 2022;

- b) \$80,000 paid by Plaintiff to NBK on April 18, 2023; and
- c) \$80,000 paid by Plaintiff to NBK on May 10, 2023

were fraudulently induced by NBK and were payments for which the Plaintiff received nothing in return and constitute fraudulent conveyances in violation of U.S.C. § 544, 548, and 550 and TEX. BUS. & COMM. CODE §§ 24.001, *et seq.*, for which the Plaintiff hereby sues NBK to recover all such amounts. In addition, the Loan Agreement between NBK and Plaintiff set aside reserve funds to cover certain events of default related to the anchor tenant. Due to COVID-19, this provision of the Loan Agreement activated, and Plaintiff's loan payments were being drawn down from the reserve funds. However, NBK intentionally depleted Plaintiff's reserve funds, and transferred Plaintiff's funds to itself prior to the time when they were actually due. Plaintiff requests an injunction pursuant to Sec. 24.008.

#### **COUNT 6: ESTOPPEL**

79. Plaintiff repeats and realleges the allegations set forth in all preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

80. NBK is estopped from claiming Plaintiff owes any more than the amount stated and agreed to in the Confidential Settlement Agreement because of its fraud and fraudulent inducement alleged previously.

#### **COUNT 7: BUSINESS DISPARAGEMENT**

81. Plaintiff repeats and realleges the allegations set forth in all preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

82. The posting of the 2425 Building during any negotiation periods and/or the extended grace period when actual buyers were moving toward concluding a deal and when other

potential buyers were expressing interest in the 2425 Building, constituted business disparagement against the Plaintiff for which Plaintiff hereby sues NBK.

83. The efforts of Zaheer to make false accusations and representations about the Plaintiff's ownership interests, management, and decision-making abilities constituted business disparagement against the Plaintiff for which the Plaintiff hereby sues Zaheer.

84. The business disparagement by the Defendants damaged Plaintiff in amounts to be determined after discovery, but which exceed the minimum jurisdictional limits of this Honorable Court.

**COUNT 8: BREACH OF GOOD FAITH AND FAIR DEALING**

85. Plaintiff repeats and realleges the allegations set forth in all preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

86. Every contract has a duty of good faith and fair dealing engrafted upon it, especially in a lender/borrower relationship, and even more so when the lender is based in the State of New York as NBK is.

87. NBK breached its duty of good faith and fair dealing by:

- a) Inducing Plaintiff to dismiss their State Court lawsuit;
- b) Inducing Plaintiff to enter into the Confidential Settlement Agreement;
- c) Tortiously interfering with Plaintiff's performance under the Confidential Settlement Agreement;
- d) Tortiously interfering with third-party contracts;
- e) Not approving tenant leases or contracts for sale; and
- f) deflecting buyers so Plaintiff could not sell the 2425 Building.



88. Plaintiff hereby sues NBK for breach of duty of good faith and fair dealing. The damages are for the value of the amounts that would have been recovered in the state court litigation and/or the value of the deals lost for leases and/or sales of the 2425 Building.

**COUNT 9: UNJUST ENRICHMENT**

89. Plaintiff repeats and realleges the allegations set forth in all preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

90. If NBK is allowed to foreclose on the 2425 Building it will make an unconscionable profit and succeed in its “loan to own” gambit. The amount of its unjust enrichment for which Plaintiff hereby sues NBK is the difference between what NBK would have been owed (but for its breaches of the Confidential Settlement Agreement) under the Confidential Settlement Agreement and the true value of the building, for which Plaintiff hereby sue NBK.

**COUNT 10: CONSPIRACY**

91. Plaintiff repeats and realleges the allegations set forth in all preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

92. Defendants agreed to work in concert with each other in order to interfere with Plaintiff’s bankruptcy case, and to have it dismissed by making fraudulently claiming Azeemeh had control over Naissance Galleria, LLC.

93. Defendants acted with the intent to harm plaintiff by disrupting its bankruptcy proceedings and ultimately obtaining a sua-sponte dismissal of such proceeding based upon their allegations

94. To accomplish the object of their agreement Defendants intentionally or negligently mischaracterized the effect of the state court temporary injunction, in order to confuse and disrupt Plaintiff’s bankruptcy case, which resulted in dismissal.

95. The agreement to engage in this conduct proximately caused injury to plaintiff. Plaintiff's sole asset and its ability to reorganize its affairs under Chapter 11 of the bankruptcy code, has now been posted for foreclosure on December 5<sup>th</sup>, 2023, instead of being protected through its reorganization proceedings. A foreclosure will irreparably harm Plaintiff.

**COUNT 11: FEDERAL MISREPRESENTATION OF SERVICES AND UNFAIR  
COMPETITION UNDER THE LANHAM ACT**

96. Plaintiff repeats and realleges the allegations set forth in all preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

97. Section 43 of the Lanham Act provides civil relief to any person damaged by the acts of another with connection to "any goods or services," who uses any "false designation of origin, false, or misleading description of fact, or false or misleading representation of fact" that either is either "likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person," or "in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities." 41 U.S.C. § 1125(a)(1).

98. To establish a prima facie claim under § 43 of the Lanham Act of 1946, a plaintiff must establish that: (1) the defendant made a "false or misleading statement of fact," (2) the statement "either deceived or had the capacity to deceive a substantial segment of potential consumers," (3) the deception was "material, in that it is likely to influence the consumer's purchasing decision," (4) the goods, services, or commercial activities must be "in interstate commerce," and finally, (5) "as a result of the statement at issue," there was injury to the plaintiff

or the plaintiff “is likely to be injured.” *IQ Prod. Co. v. Pennzoil Prod. Co.*, 305 F.3d 368, 375 (5th Cir. 2002).

99. NBK and the Plaintiff entered into a settlement agreement in the spring of 2023. The settlement agreement was confidential. Thereafter, NBK made misleading statements about the confidential settlement agreement that deceived others, the actions were material, the actions were in interstate commerce and resulted in injury to the Plaintiff. Since the settlement agreement was and may still be confidential, further information about the actions could be argued to be a breach of the confidentiality provisions.

100. Further, NBK made misleading statements on the potential leases in the building owned by the Plaintiff. The Plaintiff had numerous potential leases, NBK refused to approve the leases, the actions of NBK were misleading, the actions were deceptive as to both the Plaintiff and the potential leases, the actions were material in influencing the potential tenants in future relations with the Plaintiff, many of the larger proposed tenants were or are national companies in interstate commerce and the actions caused injury to the Plaintiff.

101. Further, the Plaintiff and principally its owner purchase liens on properties and to purchase properties oftentimes at foreclosure sales, but other times as purchasers from willing sellers. Many of these properties are worth millions of dollars. Buying properties worth millions of dollars is a very capital-intensive business. Consequently, Choudhri must maintain good reputations to assure that lenders will lend him money and buyers will enter into contracts to purchase their properties since the primary sources of capital necessary to keep this business functioning are capital from lenders and proceeds from the sales of their existing properties.

102. The capital utilized in the leases and businesses comes from and flows through interstate commerce and at times through international commerce, and the purchasers or some of

their members are oftentimes citizens of states other than Texas or countries other than the United States of America.

103. NBK has engaged in false advertising in violation of Section 43(a) of the Lanham Act as described above and possibly in other ways.

104. These acts and others were in violation of 15 USC § 1125(a), Section 43a of the Lanham Act.

**COUNT 12: ATTORNEYS' FEES**

105. Plaintiff repeats and realleges the allegations set forth in all preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

106. Plaintiff hereby sues Defendants for its reasonable and necessary attorneys' fees under breach of a written contract under Civil Practice and Remedies Code §38.001, under the fee shifting agreement of the contract, and under any statutory or common law right to recover same.

**VI. JURY DEMAND**

107. Plaintiff demands a jury trial and tenders the appropriate fee with this petition.

**VII. PRAYER**

108. For the reasons set forth above, Plaintiff asks that the Court enter a judgment relief in the following manners:

- a) Actual damages including economic injuries & consequential damages;
- b) Attorney's fees;
- c) Exemplary damages;
- d) Prejudgment and post judgment interest;
- e) Court costs; and

f) All other relief to which Plaintiff is entitled under both law and equity.

Respectfully submitted,

The Pope Law Firm  
6161 Savoy Drive, Suite 1125  
Houston, Texas 77036  
Ph: 713-449-4481  
Fx: 281-657-9693  
jamesp@thepopelawfirm.com

By: /s/ James Q. Pope  
James Q. Pope  
TBN: 24048738  
Attorney for Plaintiff

**CERTIFICATE OF SERVICE**

I certify that on December 17, 2023, a copy of the foregoing was served on interested parties by electronic service using the court's electronic noticing system.

By: /s/ James Q. Pope  
James Q. Pope

**Automated Certificate of eService**

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

James Pope on behalf of James Pope

Bar No. 24048738

jamesp@thepopelawfirm.com

Envelope ID: 82647538

Filing Code Description: Amended Filing

Filing Description: Plaintiff Sixth Amended Petition

Status as of 12/18/2023 9:54 AM CST

**Case Contacts**

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Sheryl Chandler		chandlers@passmanjones.com	12/17/2023 7:53:14 PM	SENT
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MacGeorge Law Firm Admin		service@jlm-law.com	12/17/2023 7:53:14 PM	SENT
Clouthier Law		info@clouthierlaw.com	12/17/2023 7:53:14 PM	SENT
Ryan Steinbrunner		ryan.steinbrunner@pillsburylaw.com	12/17/2023 7:53:14 PM	SENT
Elizabeth Klingensmith		liz.klingensmith@pillsburylaw.com	12/17/2023 7:53:14 PM	SENT

**Automated Certificate of eService**

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

James Pope on behalf of James Pope  
 Bar No. 24048738  
 jamesp@thepopelawfirm.com  
 Envelope ID: 82647538  
 Filing Code Description: Amended Filing  
 Filing Description: Plaintiff Sixth Amended Petition  
 Status as of 12/18/2023 9:54 AM CST

**Case Contacts**

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Angela McGinnis		angela.mcginnis@pillsburylaw.com	12/17/2023 7:53:14 PM	SENT
Ali Choudhri		ali@jetallcompanies.com	12/17/2023 7:53:14 PM	SENT

Associated Case Party: Ali Choudhri

Name	BarNumber	Email	TimestampSubmitted	Status
Ali Choudhri		legal@jetallcompanies.com	12/17/2023 7:53:14 PM	SENT

## EXHIBIT 3



# EXHIBIT

## B

Unofficial Copy Office of Marilyn Burgess District Clerk

**DECLARATION OF QUANELL X**

I, Quanell X Farrakhan, am a person over the age of eighteen (18) years and am competent to give this declaration. I have personal knowledge of the facts set forth in this declaration, and such facts are true and correct.

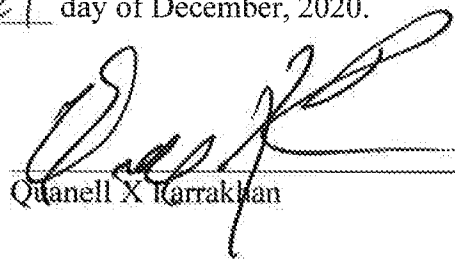
In October 2020, I met with Osama Abdullatif. During that meeting, Mr. Abdullatif told me he had text messages from Chris Wyatt. Mr. Abdullatif said he felt like Mr. Wyatt was trying to extort him. I understood Mr. Wyatt to be a former employee of Ali Choudhri. Mr. Abdullatif told me that he Mr. Wyatt wanted to sell Mr. Choudhri's business records/files and property.

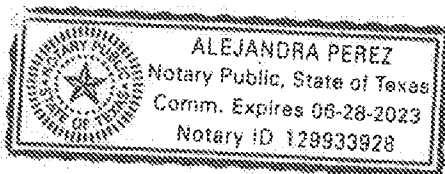
Mr. Abdullatif said he had in his phone text messages from Mr. Wyatt where Mr. Wyatt asked Mr. Abdullatif to pay \$200,000 in exchange for assisting and selling information and property to Mr. Abdullatif. Mr. Abdullatif told me he wanted to pay Mr. Wyatt for information and business records/files of Mr. Choudhri.

During this meeting Mr. Abdullatif showed me his phone and told me about a series of text messages from Chris Wyatt. The messages identified specific documents Mr. Wyatt was able to steal from his employer, Jetall companies, prior to his resignation. Wyatt's messages also touted his personal knowledge of Jetall's business operations and its President Ali Choudhri. Wyatt apparently believed his stolen documents and information were extremely valuable. The series of text messages culminated with a request by Wyatt for \$200,000.00 in exchange for his cooperation, information and the stolen property. Based on the text messages Mr. Abdullatif told me and related discussions, Mr. Wyatt asked Mr. Abdullatif to pay \$200,000 in exchange for assisting Mr. Abdullatif and providing him with documents and information belonging to Ali Choudhri. Mr. Wyatt asked Mr. Abdullatif to pay \$200,000 in exchange for assisting Mr. Abdullatif and providing him with documents and information belonging to Ali Choudhri.

My date of birth is 12-7-70, and my address is 10061 Rebel Rd.  
I declare under penalty of perjury that the foregoing is true and correct.

Executed in Harris County, Texas, on the 29 day of December, 2020.

  
\_\_\_\_\_  
Quanell X Farrakhan



## EXHIBIT 4

# EXHIBIT 14

## THIRD DECLARATION OF QUANELL X

I, Quanell X Farrakhan, am a person over the age of eighteen (18) years and am competent to give this declaration. I have personal knowledge of the facts set forth in this declaration, and such facts are true and correct.

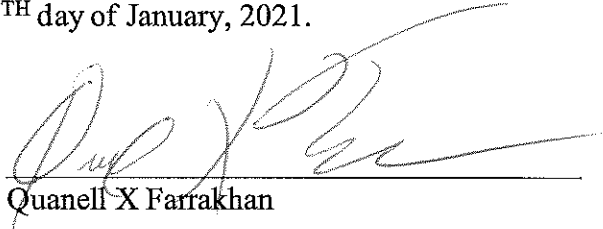
On approximately January 20, 2021, I received the text attached as Exhibit A hereto from Wayne Dolcefino.

In regards to my prior Declarations and discussions of meetings with Osama Abdullatif, Abdullatif informed me in one of the meetings that Chris Wyatt had told him that Ali Choudhri had hired me to kill Abdullatif. Since this was obviously false, I spoke with officers from the Houston Police Department concerning these allegations and they confirmed to me that they had dismissed Wyatt's false accusations against me and Choudhri as a hoax.

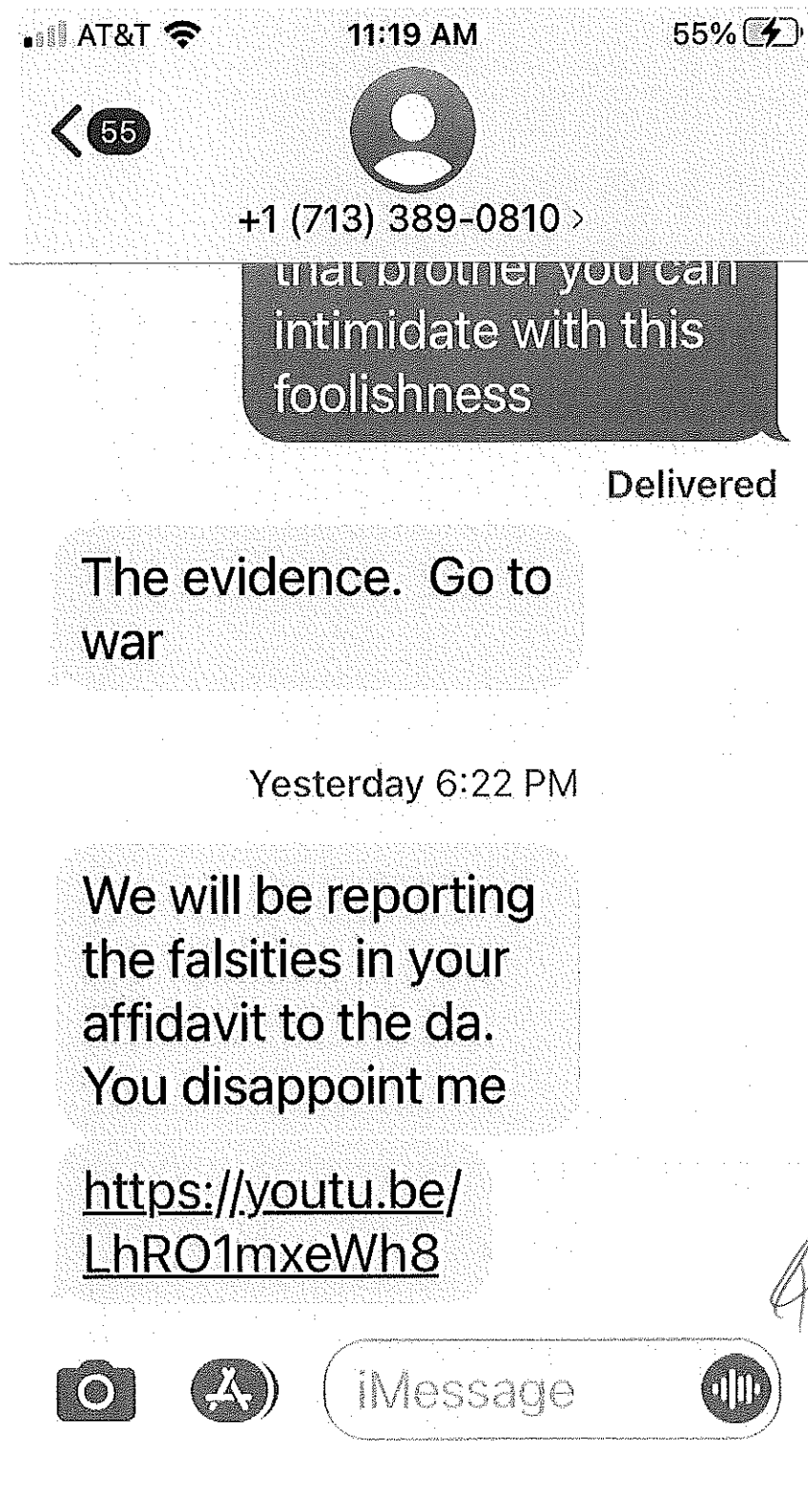
My date of birth is December 7, 1970, and my address is 10061 Rebel Road, Houston, TX 77016.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Harris County, Texas, on the 25<sup>TH</sup> day of January, 2021.



Quanell X Farrakhan



## EXHIBIT 5

**In the Matter Of:**  
**TEXAS REIT LLC**

24-10120-smr

**OMAR KHAWAJA**

*September 11, 2024*

OMAR KHAWAJA  
TEXAS REIT LLC

September 11, 2024

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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

In re: Chapter 11  
TEXAS REIT, LLC Case No.  
Debtor 24-10120-smr

REMOTE DEPOSITION OF  
OMAR KHAWAJA

September 11, 2024  
10:15 a.m.

5051 Westheimer, Suite 1200  
Houston, Texas

Cheryl Madriaga, Shorthand Reporter



OMAR KHAWAJA  
TEXAS REIT LLC

September 11, 2024

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APPEARANCES OF COUNSEL:

On behalf of Debtor, Texas Reit, LLC:

STEPHEN W. SATHER, ESQ.  
BARRON & NEWBURGER, P.C.  
7320 N. Mopac Expy, Suite 400  
Austin, TX 78731  
(512) 476-9103  
ssather@bn-lawyers.com

On behalf of Deponent, Omar Khawaja:

MICHAEL BALLASES, ESQ.  
HOOVER SLOVACEK, LLP  
5051 Westheimer, Suite 1200  
Houston, Texas 77056  
(713) 977-8686  
ballases@hooverslovacek.com

On behalf of Dalio Holdings I and II, LLC:

LORI A. HOOD, ESQ.  
SHACKELFORD, MCKINLEY & NORTON, LLP  
717 Texas Avenue, 27th Floor  
Houston, TX 77002  
(832) 669-6081  
lhood@shackelford.law

Also Present:

Dwayne Mason, Esq., Greenberg Traurig, LLP -  
prospective counsel for Dalio Holdings I and II, LLC

Ali Chouhdri, pro se - in his individual capacity

Gene McCubbin - assistant to Lori Hood

Tammy Luu - assistant to Ali Choudhri

Osama Abdullatif - noticed deponent

John Quinlan - noticed deponent

OMAR KHAWAJA  
TEXAS REIT LLC

September 11, 2024

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OMAR KHAWAJA  
TEXAS REIT LLC

September 11, 2024

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PROCEEDINGS

THE REPORTER: We are on the record. The date is September 11th, 2024. This begins the deposition of Omar Khawaja.

My name is Cheryl Madriaga, representing Esquire Deposition Solutions.

Will counsel please state their name on the record and whom they represent?

MR. SATHER: Stephen Sather --

MR. BALLASES: Michael Ballases --

MR. SATHER: -- attorney for --

MR. BALLASES: -- (unintelligible) Khawaja --

THE REPORTER: Sorry --

MR. BALLASES: -- John Quinlan, and Osama Abdullatif.

THE REPORTER: Okay. Sorry. I just had two people speaking at once. Could I start with one counsel, please?

MR. BALLASES: Sure. Michael Ballases, counsel of record for the deponent, Omar Khawaja, also John Quinlan, also Osama Abdullatif.

THE REPORTER: Thank you.

MR. SATHER: Stephen Sather --

MR. BALLASES: You're welcome.

MR. SATHER: -- for Texas REIT, LLC, the

OMAR KHAWAJA  
TEXAS REIT LLC

September 11, 2024

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debtor in this case.

MS. HOOD: Lori Hood of Dalio Holdings, a  
creditor in the case.

MR. CHOUDHRI: Ali Choudhri, a creditor in the  
case.

THE REPORTER: Okay. Is there anything else,  
or are we ready to have me swear in the witness?

MR. BALLASES: Now, there are other people on  
the call. They need to make an appearance.

MR. MASON: This is Dwayne Mason, prospective  
counsel for Dalio with Greenberg Traurig.

MR. MCCUBBIN: Gene McCubbin, assistant to  
Lori Hood.

MR. BALLASES: Okay. I'm going to object --  
this is Michael Ballases. I'm going to object to Lori  
Hood, her assistant, Ali Choudhri, and Dwayne Mason  
being present on the call. They're not -- they don't  
represent Texas REIT. They're not parties, they don't  
have standing, and they cannot participate. And this  
is not a creditors' meeting. So I want that to be on  
the record.

MR. SATHER: All right. Your objection is  
noted. Let's proceed.

THE REPORTER: Okay. And just before we go on  
the record, I just ask that we please do our best not

OMAR KHAWAJA  
TEXAS REIT LLC

September 11, 2024

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1 to speak over one another.

2 Mr. Khawaja, please keep your voice nice and  
3 loud, allow counsel to finish his completely before  
4 you begin your answer, and all answers must be verbal.  
5 Thank you.

6 MR. CHOUDHRI: Just confirming, Madam Court  
7 Reporter, we are on the record; right?

8 THE REPORTER: Yes, we are.

9 MR. SATHER: All right.

10 MR. CHOUDHRI: Okay.

11 MR. SATHER: If you would swear in the  
12 witness, please.

13 OMAR KHAWAJA,  
14 having been first duly sworn, was examined and  
15 testified as follows:

16 EXAMINATION

17 MR. BALLASES: Real quick before we get  
18 started -- this is Michael Ballases -- I assume we  
19 have an agreement to take this deposition by the  
20 Federal Rules of Civil Procedure and also the Court's  
21 limiting instruction.

22 MR. SATHER: Yes.

23 MR. BALLASES: Okay.

24 BY MR. SATHER:

25 Q. All right. Mr. Khawaja, have you ever given a

OMAR KHAWAJA  
TEXAS REIT LLC

September 11, 2024

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1 deposition before?

2 A. I don't think so, no.

3 Q. All right. But are you familiar with the

4 process for taking a deposition, sir?

5 A. Yes. Yes, I am.

6 Q. And do you understand that your testimony

7 today is under oath?

8 A. Yes, I do.

9 Q. And is there anyone present in the room with

10 you where you are giving your testimony?

11 A. Yes, my attorney, Michael Ballases, and the  
12 other two parties, Osama Abdullatif and John Quinlan.

13 Q. All right. And, Mr. Khawaja, do you  
14 understand that you cannot confer with any of the  
15 parties in the room with respect to your answers?

16 A. Yes, I do.

17 Q. Tell me what you do for a living.

18 A. I'm an attorney.

19 Q. And are you familiar with a company called  
20 Texas REIT, LLC?

21 A. Yes, I am.

22 Q. And how are you familiar with Texas REIT, LLC?

23 A. So an entity that Ali Choudhri owns.

24 Q. Okay.

25 A. Or controls.

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1 Q. And have you ever entered into a business  
2 transaction with Texas REIT, LLC?

3 A. No, I have not.

4 Q. Do you claim to be an owner of Texas REIT,  
5 LLC?

6 A. No, I don't.

7 Q. Have you ever filed a notice of lis pendens on  
8 behalf of any party against Texas REIT, LLC?

9 A. I may have, yes.

10 Q. Okay. And are you familiar with what a notice  
11 of lis pendens is?

12 A. Yes.

13 Q. Are you familiar with Ali Choudhri, who is  
14 present here today?

15 A. Yes.

16 Q. And how are you familiar with Mr. Choudhri?

17 A. I have litigation against him. He's defrauded  
18 me. He's defrauded people I know. I represent people  
19 against him. And, you know, we're sitting here in  
20 this case today, so I know him because I am a party in  
21 this case.

22 Q. All right. Are you familiar with Jetall  
23 Companies?

24 A. Yes.

25 Q. And how are you familiar with Jetall

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1 Companies?

2 A. It's an entity that Ali Choudhri controls or  
3 owns, and I have judgments against them.

4 MR. SATHER: All right. I'm going to share my  
5 screen and show Exhibit 1.

6 (Debtor's Exhibit No. 1 was marked for  
7 identification.)

8 Q. (BY MR. SATHER) I have previously provided  
9 this document to the court reporter and your counsel.

10 And so can you see Exhibit Number 1 on the  
11 screen, sir?

12 A. Yes, I do.

13 THE WITNESS: Do you have a physical copy too,  
14 Michael?

15 Q. (BY MR. SATHER) All right. Now, are you  
16 familiar -- are you aware that this is a proof of  
17 claim filed with the United States Bankruptcy Court?

18 A. Yes, I am.

19 Q. And are you one of the claimants listed on  
20 this proof of claim?

21 A. I am.

22 Q. And as I read the proof of claim, there are  
23 three individuals who are listed as the current  
24 creditor: John Quinlan, Omar Khawaja, and Osama  
25 Abdullatif. What is the relationship between the



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1 three individuals with respect to the proof of claim?

2 A. They're just judgment orders.

3 Q. Okay. But do each of you assert the claim

4 jointly and severally, or do each of you have

5 different pieces of the claim?

6 A. You know, jointly and severally.

7 Q. All right. Now, do you have an agreement

8 between the three of you as to how any monies received

9 on the claim will be divided?

10 A. Not particularly. I mean, you know, we don't

11 have a written agreement, from my understanding.

12 Q. Okay. Now, if I could go --

13 MR. BALLASES: (Unintelligible) Ballases. I'm

14 going to object. You're violating -- you're being

15 harassing and oppressive and that you're violating the

16 Court's limiting instruction.

17 I'm going to give you a little bit of leeway

18 to get into all this just because it's background, but

19 the purpose of this deposition is for you to ascertain

20 why my clients filed the proof of claim and why they

21 now want to withdraw it. And so I'll give you some

22 leeway, but I'm just letting you know.

23 MR. SATHER: All right. I disagree with that

24 contention. I've listened to Judge Robinson's ruling.

25 I think it's broader. But I'm going to continue on,

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1 and if we run into a problem, we may have to take that  
2 up with the Court. But let me move on with my  
3 questions.

4 Q. (BY MR. SATHER) Mr. Khawaja, did you sign the  
5 proof of claim?

6 A. I don't recall signing it. I may have. I  
7 don't know.

8 Q. Okay. Did you authorize filing the proof of  
9 claim?

10 A. Yes, I did.

11 Q. Did you read the proof of claim before it was  
12 filed?

13 A. Yes.

14 Q. What steps did you take to ensure that the  
15 proof of claim was accurate?

16 A. I read it.

17 Q. All right. Now, I'm going to go down to Box 7  
18 on the claim, and that has a dollar amount. Do you  
19 see that?

20 A. Yes.

21 Q. And do you know how that number was  
22 calculated?

23 A. I don't recall.

24 Q. Going to page 8 of 54, there is a summary of  
25 damages. Does that refresh your recollection as to

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1 how the proof of claim numbers were calculated?

2 A. Can you enlarge it just a little bit so I can

3 look at it carefully?

4 Q. Sure I can. It does depend on my ability to

5 work this. Does that help?

6 A. Yeah, that -- that helps. Thank you.

7 Q. And so do you know where -- and let me scroll

8 up here.

9 A. Sure.

10 Q. Do you know where these numbers came from?

11 A. This appears to be numbers that my counsel

12 provided.

13 Q. And for the record, who is your counsel who

14 provided the numbers?

15 A. Michael Ballases with Hoover Slovacek.

16 Q. And have you taken any steps personally to

17 verify that these amounts are correct?

18 A. I mean, I looked at the judgments before we

19 filed them.

20 Q. Anything else?

21 A. That's it.

22 Q. Now I'm going to go to Box 9 and -- now, on

23 this page, it asks: Is any -- all or any part of the

24 claim secured? And it's not checked, but I'd like to

25 go to a subsequent page. It may be a prior page.

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1 Excuse me.

2 Okay. Here we go. Looking at Box 9, do you

3 see where the box of, Is the claim secured, checked

4 "Yes." Do you see that, sir?

5 A. I do see that.

6 Q. What is the basis for the claim being secured

7 according to the proof of claim?

8 A. I mean, I'd have to ask my attorney.

9 Q. Okay. But it says -- and I believe this is

10 probably a typo, but it says "lis pendens." You think

11 that's a reference to filing of a notice of lis

12 pendens?

13 A. It could be.

14 Q. And is it your contention that filing a notice

15 of lis pendens creates an interest in property?

16 A. It doesn't create -- it doesn't create an

17 interest in property.

18 Q. All right. What do you believe that it does?

19 A. It secures a potential claim against property.

20 Q. Okay. Now, it's my understanding that the

21 proof of claim is based upon three separate judgments.

22 Is that your understanding?

23 A. I think that's accurate.

24 Q. Now, would you agree with me that none of

25 these judgments were taken against Texas REIT, LLC,

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1 the debtor in this case?

2 A. I believe that's correct.

3 Q. Now, I'm going to go down and look at the  
4 different judgments, and I'm going to ask you some  
5 questions about them. And actually I'm just going to  
6 start with the summary here.

7 Number 1 is -- Judgment 1 is called the "Davy  
8 and Heil Judgment." Do you see that?

9 A. I do.

10 Q. And this appears to be -- actually, I am going  
11 to go to the judgment. I apologize. This appears to  
12 be a judgment in a case from the Court of Appeal  
13 styled Jetall Companies, Inc., Appellant, versus  
14 Richard Heil, Todd Oakum, and Renee Davy, formerly  
15 known as Renee Davy, formally known as Renee Oakum.

16 Do you see that?

17 A. I do.

18 Q. Now, you were not a party to this judgment,  
19 were you, sir?

20 A. I was not.

21 Q. And what is your connection to the judgment  
22 that would give you the authority to submit a proof of  
23 claim in this case?

24 A. The judgment was assigned to me.

25 Q. Okay. And is that -- was that a written

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1 assignment of judgment?

2 A. Yes.

3 Q. And I will represent to you that the

4 assignment of judgment is not part of the proof of

5 claim. Do you know why that assignment was not

6 included?

7 A. I don't know why.

8 Q. And if we were to look at the assignment of

9 the judgment, would the assignee be just Omar Khawaja,

10 or would it be someone else?

11 A. I believe my assignment would have my name on

12 it. I'm not sure about the other assignments.

13 Q. Okay. So for this particular judgment, it was

14 assigned to you, Omar Khawaja?

15 A. I don't have it in front of me. It's possible

16 that Mr. Abdullatif and Mr. Quinlan's name are on the

17 assignment.

18 Q. All right. How much did you pay to have the

19 judgment assigned to you?

20 A. I don't recall.

21 Q. And did you pay anything to acquire the

22 judgment?

23 A. Yes, I did.

24 Q. Now, do you agree with me that this judgment

25 is against Jetall Companies and not Texas REIT?

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1 MR. BALLASES: Objection. Form.

2 A. This particular judgment is against Jetall;  
3 that is correct.

4 Q. (BY MR. SATHER) All right. And so do you  
5 contend that Texas REIT, LLC, is liable for a judgment  
6 against Jetall Companies, Inc.?

7 A. Yes, I do.

8 Q. And why do you contend that, sir?

9 A. Because all of the entities that Mr. Choudhri  
10 either controls or is involved in are essentially  
11 shell companies for his own personal finances, so  
12 any --

13 Q. (Unintelligible)

14 A. Any company are -- I'm sorry. Would you like  
15 me to continue, or --

16 Q. Yes, please.

17 A. -- do you want to --

18 Q. I did not mean to cut you off.

19 A. Sorry. I was saying any entity that  
20 Mr. Choudhri controls or owns is treated as if it is  
21 his own personal asset with no respect for the  
22 corporate form and, I believe, is responsible for --  
23 one entity is responsible for the other entity's  
24 conduct.

25 Q. Now I'd like to scroll down to the second

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1 judgment. And this document says it's a judgment from  
2 the 14th Court of Appeals in Jetall Companies, Inc.  
3 Versus Hoover Slovacek, LLP. Are you familiar with  
4 this judgment?

5 A. Yes, I am.

6 Q. Is Hoover Slovacek the law firm that is  
7 representing you today in connection with this  
8 deposition?

9 A. Yes, it is.

10 MR. BALLASES: Objection. Form.

11 Q. (BY MR. SATHER) You can answer.

12 A. Yes.

13 Q. What is your connection to -- your connection,  
14 if any, to this judgment?

15 A. I believe I acquired it.

16 Q. Did you acquire it by way of a written  
17 assignment?

18 A. Yes.

19 Q. And did you pay any consideration to Hoover  
20 Slovacek to acquire their judgment?

21 A. Yes.

22 Q. And how much did you pay them to acquire this  
23 judgment?

24 A. I don't recall how much I paid.

25 Q. And is it a regular part of your business to



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1 purchase judgments?

2 A. Yes, it is.

3 Q. Now, I may have asked this already, in which  
4 case I apologize, but do you have a written assignment  
5 of judgment?

6 A. Yes -- yes, I believe there is one. I don't  
7 have it in front of me.

8 Q. Is there a reason that assignment was not  
9 included with the proof of claim?

10 A. I don't know.

11 Q. And do you know whether the assignment would  
12 have been in favor of you, John Quinlan, Osama  
13 Abdullatif, or some combination of the three of you?

14 A. I believe all three of us. It was assigned to  
15 all three of us on the same instrument.

16 Q. Now, do you agree with me that this judgment  
17 is against Jetall Companies and not Texas REIT, LLC?

18 A. Yes.

19 Q. And why do you contend that Texas REIT, LLC,  
20 is liable for a judgment against Jetall Companies?

21 A. Because Texas REIT, LLC, is an alter ego of  
22 Jetall Companies, Inc.

23 Q. Now I'm going to go to the third judgment.  
24 And this is a judgment in a case -- well, first of  
25 all, do you see the judgment that I have up on the

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1 screen?

2 A. I do.

3 Q. And that appears to be a judgment in a case,  
4 Osama Abdullatif, individually, and Abdullatif &  
5 Company, LLC, versus Ali Choudhri and Houston Real  
6 Estate Properties, LLC; is that correct?

7 A. That's correct.

8 Q. And do you have an interest in this judgment,  
9 or is this just Mr. Abdullatif's judgment?

10 A. This particular judgment is Mr. Abdullatif's  
11 judgment.

12 Q. All right. So do you have any interest in  
13 this judgment whatsoever?

14 A. No, I do not.

15 MR. BALLASES: Objection. Form.

16 Q. (BY MR. SATHER) All right. Do you assert an  
17 interest in the judgment in Cause Number 2013-41273?

18 A. No.

19 MR. BALLASES: Objection. Form.

20 Q. (BY MR. SATHER) Now, of the three judgments  
21 we went through, you assert an interest in the first  
22 two, but not the third; is that correct?

23 MR. BALLASES: Objection. Form.

24 A. That's correct.

25 Q. (BY MR. SATHER) Now, continuing down in the

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1 claim, there is a copy of an adversary proceeding that  
2 was filed in the United States Bankruptcy Court for  
3 the Southern District of Texas. Are you familiar with  
4 this adversary proceeding?

5 A. Vaguely.

6 Q. Okay. And I see that you are named as one of  
7 the movants in the adversary proceeding. Do you see  
8 that?

9 A. Yes, I do.

10 Q. Did you authorize the adversary proceeding to  
11 be filed listing you as one of the participants?

12 A. Yes, I did.

13 Q. Did you read it before it was signed?

14 A. Yes, I did.

15 Q. Now, so what is your understanding of the role  
16 that this adver -- or that this original complaint  
17 plays with respect to the proof of claim that was  
18 filed on your behalf?

19 A. I mean, I'm not a bankruptcy attorney. We're  
20 doing whatever we need to do to try to collect our  
21 judgment.

22 Q. So you're an attorney; right?

23 A. Yes.

24 Q. And you -- when you represent clients, you  
25 file pleadings on their behalf; correct?

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1 A. That's correct.

2 Q. And -- but your clients need to understand  
3 what you're filing for them, don't they? Isn't that  
4 part of the rules regarding filing lawsuits?

5 A. Yes.

6 Q. What steps did you take to familiarize  
7 yourself with the allegations in this adversary  
8 proceeding?

9 A. I reviewed the judgments, and I reviewed the  
10 complaint.

11 Q. And after reviewing them, did you conclude  
12 that the allegations were true and correct?

13 A. Yes, I did.

14 Q. Now I'm going to read you a statement in  
15 paragraph 1 of the adversary proceeding, which says:

16 This lawsuit shall prove that Jetall  
17 Companies, Inc., Arabella PH 3201, LLC,  
18 9201 Memorial Drive, LLC, 2727 Kirby 26L,  
19 LLC, Texas REIT, LLC, Dalio Holdings I,  
20 LLC, Dalio Holdings II, LLC, Houston Real  
21 Estate Properties, LLC, Shahnaz Choudhri,  
22 Ali Choudhri, Shepherd-Huldy  
23 Development I, LLC, Shepherd-Huldy  
24 Development II, LLC, and Galleria Loop  
25 Note Holder, LLC, (collectively the

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Choudhri defendants) are alter egos of each other and intentionally acting in a manner to defraud creditors and evade legal obligations through a series of fraudulent transfers. The evidence will demonstrate that Ali Choudhri is the puppeteer controlling his web of business entities, which hold his various properties and other assets. This web includes Houston Real Estate Properties, LLC, and Jetall Companies, Inc., as well as the other named defendants.

Did I read that correctly?

A. Yes, you did.

Q. Do you have an understanding of what it means to say that one person or company is the alter ego of another person or company?

A. Yes.

Q. And what is your understanding?

A. That one entity pays the debts or obligations of another. They commingle funds, commingle assets. One principal is taking actions on behalf of any of the various alter egos at any given time with no respect for the corporate form. Yeah, that's my -- that's my understanding.

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1 Q. All right. Now, is it your contention that  
2 each of the 13 persons and companies named as  
3 defendants is the alter ego of every other one of the  
4 persons and companies named?

5 A. That's what --

6 MR. BALLASES: Objection. Form.

7 A. Yes.

8 Q. (BY MR. SATHER) So are you contending that  
9 Texas REIT is the alter ego of Jetall Companies?

10 MR. BALLASES: Objection. Form.

11 A. That's what it says. Yes.

12 Q. (BY MR. SATHER) And are you alleging that  
13 Texas REIT is the alter ego of Arabella PH 3201, LLC?

14 A. Yes.

15 MR. BALLASES: Objection. Form.

16 Q. (BY MR. SATHER) Are you alleging that Texas  
17 REIT is the alter ego of Dalio I Holdings (sic), LLC?

18 MR. BALLASES: Objection. Form.

19 A. Yes.

20 Q. (BY MR. SATHER) And would your answers be the  
21 same if I went through all of the rest of the names of  
22 the defendants in this case?

23 A. Yes, because Ali Choudhri controls all of  
24 them.

25 Q. All right. And so are you alleging that Ali

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1 Choudhri and Shahnaz Choudhri are alter egos of each  
2 other?

3 A. Yes.

4 MR. BALLASES: Objection. Form.

5 Q. (BY MR. SATHER) So are you -- it's your  
6 contention that any company or entity in which Ali  
7 Choudhri has an interest is an alter ego of Ali  
8 Choudhri?

9 MR. BALLASES: Objection. Form.

10 A. I don't know if there's any. I mean, are  
11 there entities that I don't know about? I don't know.

12 Q. (BY MR. SATHER) Were you aware that there was  
13 an amended complaint filed that names 17 defendants?

14 A. I believe --

15 MR. BALLASES: Objection. Form.

16 A. I believe so.

17 Q. (BY MR. SATHER) And is it your contention  
18 that each of the 17 defendants is the alter ego of  
19 each of the other 17 defendants?

20 A. If that's what the petition says, yes, that's  
21 my contention.

22 Q. The complaint alleges that each of the claimed  
23 alter egos were, quote (Reading:) ...intentionally  
24 acting in a manner to defraud creditors and evade  
25 legal obligations through a series of fraudulent

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1 transfers.

2 Did I read that right?

3 A. Yes, you did.

4 Q. So are you claiming that every one of these 13  
5 or 17 persons and companies listed made fraudulent  
6 transfers to each and every other one of the persons  
7 and companies listed?

8 A. Yes.

9 Q. So, for example, are you claiming that Shahnaz  
10 Choudhri made fraudulent transfers to 2727 Kirby 26L,  
11 LLC?

12 A. I don't know about that.

13 Q. As we sit here today, do you know of any  
14 fraudulent transfers that any of these defendants made  
15 to Texas REIT, LLC, the debtor in this case?

16 A. I don't.

17 Q. And so with respect to that particular  
18 allegation about making fraudulent transfers, you're  
19 not aware of any involving the debtor in this case;  
20 correct?

21 A. I'm not aware of any sitting as -- as I'm  
22 sitting here right now. But any specific one? No.

23 Q. And what would you need to do --

24 THE WITNESS: Oh, Mr. Sather, I'm sorry. I  
25 need to just take a quick restroom break if you don't



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1 mind.

2 MR. SATHER: All right --

3 MR. CHOUDHRI: No. No. No. Hold on. Let's  
4 finish this line of questioning. Please ask your  
5 question --

6 MR. SATHER: Mr. Choudhri -- Mr. Choudhri,  
7 it's my questions. I decide whether we're going to  
8 take a bathroom break or not.

9 I don't have a problem with taking a break,  
10 but do not discuss your testimony with your attorney  
11 while we're off the record.

12 THE WITNESS: Not a problem.

13 MR. SATHER: All right. And so five minutes?

14 THE WITNESS: Five minutes should be good.

15 MR. SATHER: All right. Madam Reporter, we  
16 will be off the record for five minutes.

17 THE REPORTER: Off the record.

18 (A recess was taken.)

19 THE REPORTER: All right. We are back on the  
20 record.

21 Q. (BY MR. SATHER) And, Mr. Khawaja, I want to  
22 follow up on something I asked you earlier. When I  
23 asked you how you knew Ali Choudhri, you said that he  
24 defrauded you. Can you tell me what transaction that  
25 he defrauded you with regard to?

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1 MR. BALLASES: Objection. Form.

2 A. It was an apartment complex that my family  
3 owned.

4 Q. (BY MR. SATHER) And was it you personally, or  
5 was it your family?

6 MR. BALLASES: I'm going to instruct the  
7 witness not to answer. He's here to answer the basis  
8 for his proof of claim and why he wants to withdraw  
9 it. That's not a part of his claim. It's not alleged  
10 in any of the documents, and therefore, it's outside  
11 the scope of the judge's limiting instruction.

12 Q. (BY MR. SATHER) Is this prior transaction --  
13 have anything to do with this case?

14 A. I'm sorry. Can you repeat that question?

15 Q. Yes. Does the prior transaction where you say  
16 Mr. Choudhri defrauded you or your family -- does that  
17 have anything to do with the proof of claim against  
18 Texas REIT?

19 A. No.

20 Q. Now, earlier I asked you about whether your  
21 business involved purchasing judgments, and I also --  
22 you also testified that you're an attorney. Are those  
23 separate businesses that you're involved in?

24 A. No.

25 Q. And so do you purchase judgments through your

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1 law firm?

2 A. Yes.

3 Q. And about how many judgments have you

4 purchased in, say, the last five years?

5 MR. BALLASES: Objection. Form.

6 A. I don't know. I'm not sure, to be honest with

7 you.

8 Q. (BY MR. SATHER) More than ten?

9 A. No, probably not more than ten.

10 Q. And --

11 MR. BALLASES: Objection. Form.

12 Q. (BY MR. SATHER) -- have you -- do you

13 purchase judgments against anyone other than entities

14 related to Ali Choudhri?

15 MR. BALLASES: Objection. Form.

16 A. Not that I can recall.

17 Q. (BY MR. SATHER) All right. So when we talk

18 about your purchase of judgments, that -- at least as

19 you recall today, those relate to your dealings with

20 Ali Choudhri.

21 A. Yes.

22 Q. And how would you describe your relationship

23 with Mr. Choudhri?

24 MR. BALLASES: Objection. Form.

25 A. What do you -- what do you mean?

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1 Q. (BY MR. SATHER) Is it cordial? Unpleasant?

2 Adversarial?

3 MR. BALLASES: Objection. Form.

4 A. He owes me money. I mean, that's about it.

5 Q. (BY MR. SATHER) Going back to the adversary

6 proceeding that's part of the proof of claim, I'm

7 going to go to paragraph 22. And it's kind of a long

8 paragraph, so I'm just going to read you some

9 sentences towards the end where it says, quote

10 (Reading:) Choudhri views HREP, Jetall, and himself,

11 as well as the other named defendants, as one and the

12 same and utilizes them in such a fashion. In other

13 words, there is unity between Choudhri, HREP, Jetall,

14 and his other business entities such that the

15 separateness of the business entities has ceased, and

16 thus this Court should treat the Choudhri defendants

17 accordingly to protect plaintiffs/the creditors. And

18 this is where the lawsuit begins.

19 So did I read that correctly?

20 A. Yes.

21 Q. And so what is the basis for your statement

22 that Mr. Choudhri views all of the Choudhri defendants

23 as one and the same?

24 MR. BALLASES: Objection. Form.

25 A. It's in the petition, Counsel. All of the

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1 bases that we have are listed out in very clear, you  
2 know, language, just like you read.

3 Q. (BY MR. SATHER) Can you articulate what any  
4 of those bases are?

5 A. It's -- I mean --

6 MR. BALLASES: Objection. Form.

7 A. -- do you want me to -- do you want me to  
8 start reading the petition for you? I'm happy to read  
9 it for you, but it's in the petition.

10 Q. (BY MR. SATHER) I'm asking you -- I mean,  
11 without reading the petition, do you know what the  
12 basis for the allegations is?

13 A. I mean the -- without reading the petition,  
14 the purpose of the petition was to articulate the  
15 basis of the petition. So it's in the petition  
16 itself. I'm happy to read through the petition for  
17 you if you'd like me to, but in -- in plain language,  
18 he treats every entity that he controls or owns as a  
19 personal piggy bank, just like the petition states.  
20 And that's the basis of the alter ego claim that we're  
21 making.

22 Q. All right. And so your allegation is also  
23 that he views his mother as one and the same with  
24 himself?

25 MR. BALLASES: Objection. Form.

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1 A. Yes.

2 Q. (BY MR. SATHER) Now, you obviously don't  
3 contend that they're the same person; right? You --  
4 they are different human beings.

5 MR. BALLASES: Objection. Form.

6 (Crosstalk)

7 A. Sorry. Is that a -- was that -- do you really  
8 want me to answer that question? I'm not sure.

9 Q. (BY MR. SATHER) Yes, I do. I wouldn't have  
10 asked it if I --

11 A. You mean like Norman Bates, that kind of thing  
12 or -- is that what -- I'm sorry. It's just a  
13 stupid --

14 Q. (BY MR. SATHER) I just want you to  
15 acknowledge that these are two different human beings,  
16 sir.

17 A. Yes, sir. Yes, they're two different human  
18 beings.

19 Q. And so is it your contention that there's no  
20 separateness between, say, Houston Real Estate  
21 Properties, LLC, and Texas REIT, LLC?

22 MR. BALLASES: Objection. Form.

23 A. Again, I'm gonna -- I'm gonna refer you back,  
24 Mr. Sather, to the petition. That's what the petition  
25 states.

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1 Q. (BY MR. SATHER) All right. And you contend  
2 that -- and you stand by the allegations in the  
3 petition.

4 A. Yes, sir. I stand by each and every  
5 allegation in the petition.

6 MR. BALLASES: Objection. Form.

7 Q. (BY MR. SATHER) And so is everything that you  
8 know about this allegation of alter ego contained in  
9 the petition?

10 A. I mean, we don't -- I don't believe we  
11 finished discovering the process, sir, so we're -- I'm  
12 sure we're gonna get to learn a lot more about the  
13 alter-ego basis on which Mr. Choudhri operates and the  
14 other defendants.

15 Q. And so did the petition set forth all of the  
16 bases that you knew about at the time it was filed?

17 A. In a good faith manner, yes.

18 Q. All right. What does that mean, "in a good  
19 faith manner"?

20 MR. BALLASES: Objection. Form.

21 A. To the best of our ability, right, on some --  
22 on some evidence that we've been able to muster.

23 Q. (BY MR. SATHER) Did you intentionally omit  
24 any bases for making an allegation of alter ego?

25 A. No.

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1 MR. BALLASES: No, I instruct the client not  
2 to answer, simply because you're invading attorney  
3 work product, legal privileges. What we decided to  
4 put in or not in our petition is subject to work  
5 product and privilege. Don't invade our privilege,  
6 please.

7 Q. (BY MR. SATHER) All right. Do you know of  
8 any evidence that you decided not to include in the  
9 petition?

10 MR. BALLASES: Same assertion of privilege.

11 Q. (BY MR. SATHER) You can answer, sir.

12 MR. BALLASES: It's work product and  
13 privilege. I'm instructing him not to answer. It's  
14 invading a legal privilege that he enjoys.

15 THE REPORTER: And I'm sorry. Counsel, if I  
16 could just get you to just speak up a little bit as  
17 well. You're just sounding a little bit muffled.

18 MR. BALLASES: Yes, ma'am.

19 THE REPORTER: Thank you.

20 Q. (BY MR. SATHER) I'd like to go to  
21 paragraph 23 where it says (Reading:) Plaintiffs are  
22 upstanding, honest, and respectable businessmen, real  
23 estate developers, attorneys, and/or a combination of  
24 all.

25 Which of those categories do you fall into,



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1 sir?

2 A. (Reading:) Plaintiffs are upstanding, honest,  
3 respectable businessmen, attorneys --

4 A combination.

5 Q. Okay. A combination of what?

6 A. Of all.

7 Q. Okay. So you're a businessman, real estate  
8 developer, and attorney?

9 A. But I'm also upstanding, honest, and  
10 respectable.

11 Q. Okay. Now, was it upstanding, honest, and  
12 respectable for you to sponsor Mr. Choudhri's ex-wife  
13 to claim to still be married to him and file notices  
14 of lis pendens against all of his properties?

15 MR. BALLASES: I'm going to instruct the  
16 client not to answer. You are violating the Court's  
17 limiting instruction as to this deposition, and the  
18 purpose of this deposition is to find the basis for  
19 the filing of the proof of claim and why we are  
20 willing to withdraw it now. I'll let you go on and  
21 get past that, but I'm going to start putting stops to  
22 it if this is the kind of stuff we're going to have.

23 Q. (BY MR. SATHER) Okay. But it's your  
24 contention that you are, in fact, an upstanding,  
25 honest, and respectable businessman, real estate

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1 developer, and attorney, sir.

2 A. Yes --

3 MR. BALLASES: Objection. Form.

4 MR. SATHER: Now, I'm going to move on to a  
5 different exhibit, Exhibit Number 2, assuming I can  
6 bring it up on the screen.

7 (Debtor's Exhibit No. 2 was marked for  
8 identification.)

9 Q. (BY MR. SATHER) Actually, one thing I didn't  
10 ask you, Mr. Khawaja: How old of a man are you?

11 A. 46.

12 Q. And are you licensed to practice law in the  
13 state of Texas?

14 A. Yes, I am.

15 Q. And when were you licensed?

16 MR. BALLASES: Objection. Form.

17 A. 2010.

18 Q. (BY MR. SATHER) I've brought up on the screen  
19 what we've marked as Exhibit 2, which is titled  
20 "Supplemental Notice of Lis Pendens." Are you  
21 familiar with this document?

22 MR. BALLASES: Mr. Sather, we don't have  
23 copies of that. Could you please e-mail that to  
24 myself and Steve Leyh and any other exhibits you'd  
25 like to use?

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1 MR. SATHER: Sure. Those should've been  
2 provided to you in a ShareFile yesterday.

3 MR. BALLASES: Could you resend them?

4 MR. SATHER: I will -- yes, I will resend  
5 those --

6 MR. BALLASES: Please send them to Steve and  
7 myself.

8 MR. SATHER: My computer is lagging just a  
9 little bit, so it'll take a second for them to load.  
10 But I had tried to provide these to you ahead of time  
11 so we could avoid this.

12 Okay. And as you can see from the screen  
13 share, I have sent the e-mail to you.

14 THE WITNESS: Michael, I think he's addressing  
15 you on the e-mail.

16 MR. BALLASES: That's fine.

17 Q. (BY MR. SATHER) Now, what we've marked as  
18 Exhibit Number 2 is a supplemental notice of lis  
19 pendens. And I'm going to scroll down to the end of  
20 it, and do you see the real property description  
21 there?

22 A. I do, yes.

23 Q. And are you aware that that is real property  
24 owned by Texas REIT, LLC?

25 A. Yes.

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1 Q. And are you familiar with this notice of  
2 lis pendens?

3 A. I believe I looked at it before it was filed,  
4 yes.

5 Q. And it looks like it's filed by  
6 Mr. Abdullatif, and he is one of the parties to the  
7 proof of claim; correct?

8 A. Yes.

9 MR. BALLASES: Objection. Form.

10 Q. (BY MR. SATHER) And did you approve of the  
11 filing of this notice?

12 A. I must have if it was filed.

13 Q. And what's your understanding of the purpose  
14 of this notice?

15 A. To make sure that we secure any proceeds that  
16 could potentially come to Ali Choudhri or his entities  
17 that he owes to us.

18 Q. And do you know why it was filed?

19 A. For that reason.

20 MR. SATHER: I'm going to show you another lis  
21 pendens which we have marked as Exhibit Number 3.

22 (Debtor's Exhibit No. 3 was marked for  
23 identification.)

24 Q. (BY MR. SATHER) And are you familiar with  
25 this document?

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1 A. Exhibit Number 3. Sorry. Yes.

2 Q. And I see this was signed by Osama Abdullatif  
3 as well.

4 A. Yes.

5 Q. And would your questions be the same -- or  
6 your answers be the same with regard to this notice of  
7 lis pendens as with the prior one?

8 A. Yes.

9 MR. SATHER: I'm going to switch gears now and  
10 go to Exhibit Number 4, which is an adversary  
11 complaint filed by George Lee against Texas REIT, LLC,  
12 and Ali Choudhri -- or at Exhibit 4. Excuse me.

13 (Debtor's Exhibit No. 4 was marked for  
14 identification.)

15 Q. (BY MR. SATHER) Do you know George Lee?

16 MR. BALLASES: I'm going to object to this  
17 line of questioning and instruct the witness not to  
18 answer as it exceeds the scope of the limited  
19 deposition the judge granted you. This has nothing to  
20 do with our proof of claim or adversary proceeding.

21 Q. (BY MR. SATHER) Are you going to take your  
22 counsel's advice?

23 A. I am.

24 Q. So let me just ask you by way of background.  
25 Do you know George Lee?

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1 MR. BALLASES: Objection. Form. Same -- same  
2 instruction.

3 Q. (BY MR. SATHER) Are you refusing --

4 MR. CHOUDHRI: So (unintelligible) --

5 Q. (BY MR. SATHER) -- to answer that you know  
6 George Lee?

7 MR. BALLASES: Objection to form. Same  
8 objection; this has nothing to do with our claim, and  
9 you're exceeding the scope of the limited deposition  
10 the judge granted.

11 A. I'm taking my counsel's advice.

12 MR. CHOUDHRI: I just want to make sure the  
13 record is clear. Are you instructing the witness not  
14 to answer?

15 MR. SATHER: Mr. Choudhri, let me --

16 MR. BALLASES: Mr. Choudhri, please be quiet.  
17 You're not a party involved in this. You have no  
18 standing to be here.

19 MR. SATHER: He actually does under the  
20 Court's ruling. But, Mr. Ballases --

21 MR. CHOUDHRI: Wait a second. Wait -- wait --  
22 wait a second. I want to get this on the record.

23 Mr. Ballases, I am here, and I have a standing  
24 to object. Okay? And so --

25 MR. BALLASES: (Unintelligible)

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1 MR. CHOUDHRI: -- I have a standing to be  
2 here. So are you telling me on the record that you  
3 are not going to cooperate and allow me to ask  
4 questions on a deposition that I've cross-noticed?

5 MR. BALLASES: That is correct. You have no  
6 party -- you're not a party in this proceeding. You  
7 have no standing. We've also objected to your  
8 cross-notice, so you better bet your bottom dollar.

9 MR. CHOUDHRI: Okay. Besides betting my  
10 bottom dollar, Mr. Ballases, you understand that the  
11 Honorable Judge Robinson made a ruling --

12 MR. BALLASES: You're wasting your time --

13 MR. CHOUDHRI: -- and said that --

14 MR. BALLASES: -- (unintelligible) with the  
15 judge's ruling. Why don't you let your counsel ask  
16 questions.

17 MR. CHOUDHRI: No, no. I'm here representing  
18 myself pro se as a creditor. I have filed a proof of  
19 claim. I'm a creditor. I have standing.

20 Are you saying on the record that you are  
21 going to instruct your client not to answer any of my  
22 questions? I just want to get this on the record so  
23 it's clear. Are you instructing your client not to  
24 answer any questions, and is your client going to take  
25 your advice?

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1 MR. BALLASES: Yeah, so the way this  
2 proceeding words, there's a court reporter who writes  
3 down everything we say. I've been clear in my speech  
4 and what I say in my objections. If you're confused,  
5 you can ask the court reporter to read it back, or you  
6 can just take better notes. Be quiet, and let your  
7 counsel ask questions.

8 MR. CHOUDHRI: So just so the record is  
9 crystal clear, Mr. Ballases, you are instructing your  
10 client, Omar Khawaja, who is a deponent today, to not  
11 answer any questions that I'm gonna have, and you're  
12 also obstructing my ability to object or make any  
13 objections in this deposition. Is that all correct?  
14 I just want to make sure the record is very crystal  
15 clear.

16 MR. BALLASES: Let Mr. Sather ask his  
17 questions. Please be quiet.

18 MR. CHOUDHRI: Sir, I just want to clarify,  
19 because I have a right to be here and object, and you  
20 are --

21 MR. BALLASES: Let --

22 MR. CHOUDHRI: -- telling me to be quiet.

23 MR. BALLASES: -- (unintelligible) questions.  
24 So let your counsel ask questions. You're wasting  
25 everybody's time.



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1 MR. CHOUDHRI: Okay. Just so the record is  
2 clear, you are refusing to allow me to participate and  
3 object and ask questions in this deposition that I've  
4 cross-noticed; is that correct? So we're clear, is  
5 that correct or not?

6 MR. BALLASES: You are not a party. You do  
7 not --

8 THE REPORTER: I'm --

9 MR. BALLASES: Let me make it very clear for  
10 you. You are not a party to this dispute. You are  
11 not an attorney. You lack standing. This is not a  
12 creditors' meeting. We've objected to your  
13 cross-notice. Is that clear enough for you, buddy?

14 MR. CHOUDHRI: Mr. Sather, please proceed.  
15 We'll -- we'll deal with this on the record later and  
16 deal with the Court.

17 And -- and as you know, Mr. Ballases, counsel  
18 for Dalio is also on the line. Are you also objecting  
19 for them -- for Dalio's counsel to ask questions? Is  
20 that your --

21 MR. BALLASES: Yeah.

22 MR. CHOUDHRI: -- position?

23 MR. BALLASES: Yeah.

24 MR. CHOUDHRI: And you're gonna instruct your  
25 client, Omar Khawaja, to not answer questions --

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1 MR. BALLASES: Mr. Choudhri, my point is you  
2 like to play attorney, but you're not an attorney, and  
3 you don't know the legal procedure or the rules or  
4 regulations of court. So please be quiet and let the  
5 deposition proceed. You're wasting everybody's time.

6 MR. CHOUDHRI: Okay, Mr. Ballases. You don't  
7 have to be disrespectful. I was -- you know, the  
8 rules apply to all of us. If I'm pro se or if -- or  
9 if you're a lawyer, the rules apply equally. And I  
10 have to follow the rules, just like you have to follow  
11 the rules. And when a judge makes a ruling, it  
12 applies, and it says what it says. We all got to  
13 honor it. But you're refusing to honor the judge's  
14 ruling. I understand that. You're refusing to honor  
15 what --

16 MR. BALLASES: (Unintelligible)

17 MR. CHOUDHRI: -- Judge Robinson said on his  
18 oral order.

19 THE REPORTER: Sorry. Just one person at a  
20 time.

21 Mr. Ballases, I can hear you speaking in the  
22 background, but I can't hear what you're saying while  
23 Mr. Choudhri is speaking.

24 So just one person at a time if you'd like  
25 this on the record, please.

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1 MR. BALLASES: Mr. Sather, please continue.

2 Q. (BY MR. SATHER) Mr. Khawaja, I have brought  
3 back up Exhibit Number 1, the proof of claim. When  
4 you authorized the proof of claim to be filed, did you  
5 understand that it was being filed under penalty of  
6 perjury?

7 A. Yes.

8 Q. And as a lawyer, do you know what penalty of  
9 perjury means?

10 A. Yes.

11 MR. BALLASES: Objection. Form.

12 Q. (BY MR. SATHER) Now, what was your purpose in  
13 filing the proof of claim?

14 A. The purpose in filing the proof of claim? I  
15 mean, it's to collect monies that are owed to us.

16 Q. Any other purpose?

17 A. No, that's it.

18 Q. Now, I'm going to show you Exhibit Number 5,  
19 and I'm going to try to make it bigger.

20 (Debtor's Exhibit No. 5 was marked for  
21 identification.)

22 Q. (BY MR. SATHER) Were you aware that Texas  
23 REIT, LLC, filed an objection to the proof of claim?

24 A. Yes.

25 Q. And were you aware that you have not filed a

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1 response to this objection to proof of claim?

2 A. No.

3 Q. And do you see that this was filed with

4 negative notice language?

5 A. I'm not sure what that means, sir.

6 Q. Okay. Fair question.

7 Next, I'd like to show you what we've marked

8 as Exhibit Number 6, which is --

9 A. Yes.

10 Q. -- a motion for leave to withdraw Claim

11 Number 9.

12 (Debtor's Exhibit No. 6 was marked for

13 identification.)

14 Q. (BY MR. SATHER) Do you see that?

15 A. Yes, sir, I do.

16 Q. And what is your understanding of the reason

17 why you filed a -- well, let me ask you this: Did you

18 authorize the motion for leave to withdraw Claim

19 Number 9?

20 A. I did.

21 Q. And why did you authorize the claim to be

22 withdrawn?

23 A. It appears there's no money in Texas REIT,

24 LLC.

25 Q. Any other reason?

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1 A. No, sir. That's it.

2 Q. And do you understand that the consequence of  
3 withdrawing the claim means that you're not able to  
4 assert a claim to any of the property in the Texas  
5 REIT bankruptcy estate?

6 MR. BALLASES: Objection. Form. You're going  
7 beyond the scope of the limited purpose of this  
8 deposition.

9 MR. SATHER: I don't believe so.

10 Q. (BY MR. SATHER) Are you aware that Texas REIT  
11 has objected to withdrawal of the proof of claim  
12 unless it is withdrawn with prejudice?

13 A. I wasn't aware of that, no.

14 Q. All right. Do you know what "with prejudice"  
15 means?

16 A. Yes, I do.

17 Q. And you understand that if the claim is  
18 withdrawn with prejudice, you can never make these  
19 allegations against Texas REIT again.

20 A. Yes, I understand that.

21 MR. SATHER: All right. At this point I will  
22 pass the witness. I know there are other counsel  
23 present who wish to ask questions, and so I'm not  
24 concluding the deposition. I'm giving the other  
25 parties present an opportunity to ask their questions.

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1 BY MS. HOOD:

2 Q. Mr. Khawaja, my name is Lori Hood, and I  
3 represent Dalio Holdings. Nice to meet you.

4 MR. BALLASES: Ms. Hood --

5 A. Nice to meet you.

6 MR. BALLASES: -- I'm going to go ahead and  
7 just object. I'm not going to let you ask questions.  
8 You're not a party to this dispute, and you lack  
9 standing to be here. This isn't a creditors' meeting,  
10 and so -- and of course, your notice was just filed  
11 this morning, which we're going to object to. So I'm  
12 not going to let you ask questions.

13 MS. HOOD: All right. Mr. Ballases, my notice  
14 was this morning because you failed to give notice to  
15 all the creditors that this was taking place.

16 In my understanding -- and my client is a  
17 creditor. In my understanding of the judge's ruling,  
18 it allows for creditors to be in attendance at this  
19 deposition and to ask questions of your clients as to  
20 the basis and motivation of their filing the proof of  
21 claim. We can argue all day long about whether you  
22 agree with that or not. If you don't allow me to take  
23 questions -- ask questions today, then we're going to  
24 have a do-over because we're going to go back to the  
25 Court and seek a motion to compel your client's

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1 attendance at a deposition where I will ask my  
2 questions.

3 MR. BALLASES: So that's not the Court's  
4 order. The Court's order was to allow Mr. Sather to  
5 take questions -- or to ask questions to determine the  
6 basis to -- as to why we filed the proof of claim and  
7 why it has been requested to be withdrawn.

8 It is not for creditors to ask questions. The  
9 creditors -- this isn't a creditors' meeting, and so  
10 I'm not going to let you ask -- I mean, you can ask  
11 him, but I'm going to instruct him not to answer  
12 because I think you're violating the Court's ruling,  
13 and I'm going to abide by the Court's ruling.

14 MS. HOOD: So you're -- no matter what  
15 question I ask him, you're going to tell him not to  
16 answer me?

17 MR. BALLASES: Yes, ma'am.

18 MS. HOOD: Okay. And that's --

19 MR. BALLASES: You're violating the Court's  
20 ruling, and I want to abide by it.

21 MS. HOOD: All right. So you want to abide by  
22 the Court's ruling, and we have a difference of  
23 opinion as to the impact and the breadth of the  
24 Court's ruling.

25 I'm going to tell you I'm going to file a

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1 motion to compel your client's attendance at a  
2 deposition where I'm going to be allowed to ask  
3 questions. And when I do so, I'm going to ask for  
4 compensation of my attorney's fees. Do you understand  
5 that?

6 MR. BALLASES: I understand.

7 MS. HOOD: All right. And just to be clear on  
8 the record, Madam Court Reporter, Mr. Ballases is  
9 stating to me on the record that he's going to  
10 instruct his client not to answer any of my questions  
11 that I have prepared for today, all relating to the  
12 filing of the proof of claim and the motivation for  
13 filing the proof of claim and the motivation for  
14 withdrawing the proof of claim, all of which go into  
15 the merits of the judge's order.

16 And I'm objecting to Mr. Ballases' refusal to  
17 allow me to take questions -- or ask questions of his  
18 client and putting him on notice that I am going to  
19 seek my attorney's fees as compensation for me having  
20 to do a do-over with his client.

21 MR. BALLASES: For the record -- so again,  
22 this is Michael Ballases -- I believe Ms. Hood is  
23 misinterpreting the judge's ruling. She's not a party  
24 to this -- her client is not a party to this dispute.  
25 They lack standing. This is not a creditors' meeting.



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1 The basis of this deposition was for a limited purpose  
2 to allow the debtor to inquire as to why we filed the  
3 proof of claim and why we now want to withdraw it. We  
4 are abiding by the judge's ruling, and we will not  
5 deviate from it.

6 MS. HOOD: Mr. Ballases, please don't put  
7 words in my mouth. And just because, you know, we're  
8 here taking a deposition doesn't mean you always have  
9 to get the last word in. We are in a disagreement  
10 about your statements. You're not going to allow --  
11 you're going to instruct your client not to answer my  
12 questions. There's not much I can do about it if he's  
13 going to sit here and not answer my questions.

14 I will go back to the Court and ask for him to  
15 reappear and answer my questions related to the  
16 subject of this deposition of which I represent a  
17 creditor, and we are entitled to ask questions.

18 Your client's proof of claim has unnecessarily  
19 complicated the underlying chapter proceeding and  
20 gummed up a lot of other issues with regard to the  
21 debtor's property, and even today they haven't  
22 withdrawn their -- or released their lis pendens. So  
23 there's a lot to talk to him about with regard to the  
24 filing of the proof of claim, the motivation, and  
25 everything else. And I've read the judge's

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1 instructions on this issue, and I believe I'm

2 completely within my rights to ask these questions.

3 And you really don't have to answer, because I

4 don't need you to answer. We're in a disagreement,

5 and I'm going to file the motion to compel. So I

6 do --

7 MR. BALLASES: (Unintelligible)

8 MS. HOOD: I do not -- I do not pass the

9 witness. I reserve my rights.

10 MR. CHOUDHRI: And --

11 MR. BALLASES: Thank you for telling me --

12 MR. CHOUDHRI: -- I would like to make the

13 record -- I would also like to make the record very

14 clear.

15 So the record is clear, Mr. Khawaja, are you

16 taking your attorney's -- are you following your

17 attorney's instructions, and are you going to refuse

18 to answer any questions asked by Lori Hood or by my --

19 or any questions that I may ask you?

20 MR. BALLASES: So no question's on the table,

21 Mr. Choudhri, so I think you're confused --

22 MR. CHOUDHRI: Mr. Ballases -- Mr. Ballases,

23 please --

24 (Crosstalk)

25 THE REPORTER: Sorry. Just --

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1 MR. CHOUDHRI: Hang on a second. I just  
2 want --

3 THE REPORTER: Sorry. One at a time, please.  
4 Thank you.

5 MR. CHOUDHRI: I just want to make sure that,  
6 Mr. Ballases, your client can affirm that he's taking  
7 your instructions, and he's not going to answer any  
8 questions, so we don't have to sit here and ask  
9 questions if your instructions are going to be for him  
10 to not answer any of my questions that I've properly  
11 cross-noticed this deposition on pursuant to the  
12 Court's order. I just want to make sure the record is  
13 clear that your client's not answering any questions  
14 that I may ask.

15 MR. BALLASES: For the record, the record is  
16 clear. I made the same objection that I made to  
17 Ms. Hood as to you. You are not a party. You do not  
18 have standing. You're not an attorney. This isn't a  
19 creditors' meeting. We are here to answer --

20 MR. CHOUDHRI: Okay --

21 MR. BALLASES: -- the debtor's questions about  
22 the proof of claim --

23 MR. CHOUDHRI: I'm --

24 MR. BALLASES: -- and that's it.

25 MR. CHOUDHRI: Okay. We have the audio of the

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1 order, oral ruling of Judge Robinson. I would like to  
2 play that at this point for the record. So, please,  
3 if we can play that for the record --

4 MR. BALLASES: That's not --  
5 (Crosstalk)

6 THE REPORTER: I'm --

7 MR. CHOUDHRI: Tammy or Gene, can y'all play  
8 that?

9 THE REPORTER: I'm sorry. Sorry. I have two  
10 people speaking at once. I can hear Mr. Ballases, and  
11 I can hear Mr. Choudhri. Could I please just get one  
12 speaker on the record at a time.

13 MR. CHOUDHRI: So I was speaking --

14 MR. BALLASES: That's not --

15 MR. CHOUDHRI: -- and --  
16 (Crosstalk)

17 THE REPORTER: Sorry.

18 MR. CHOUDHRI: So the quote from the ruling  
19 is -- and I'm quoting the judge (Reading:) I'm going  
20 to grant the motion as to the date and time of the  
21 examinations, and my order is going to be very simple.  
22 It's going to say that. It's also going to further  
23 order that the debtor and any creditor -- any other  
24 creditor, for that matter, that cross-noticed this  
25 deposition is permitted to take a deposition --

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1 -- participate. So I just want to be clear,  
2 Mr. Ballases. I want to give you one more chance so  
3 we can conclude --  
4 MR. BALLASES: It's not unclear --  
5 MR. CHOUDHRI: -- and complete the deposition.  
6 (Crosstalk)  
7 MR. CHOUDHRI: Can I finish?  
8 MR. BALLASES: You're being --  
9 MR. CHOUDHRI: Mr. --  
10 MR. BALLASES: You're being investigated  
11 (unintelligible). You're being investigated by the  
12 Department of Justice. You've been found by courts to  
13 file lawsuits for improper purposes and harassment.  
14 You're founded by courts and juries to have committed  
15 fraud and libel, and you were just, on Monday, held by  
16 Judge Norman to be a forger and a liar. So anything  
17 you say, I don't believe --  
18 MS. HOOD: How about if I -- how about if I  
19 say it?  
20 (Crosstalk)  
21 THE REPORTER: Sorry. I'm sorry. No --  
22 sorry. Sorry. I need one person speaking at a time.  
23 The record is not clear when I have multiple speakers.  
24 Thank you.  
25 MR. CHOUDHRI: So let me just respond,

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1 Mr. Ballases. First of all, you are supporting  
2 perjury. Okay? Mr. Ballases, your client has  
3 solicited --

4 MR. BALLASES: (Unintelligible)

5 MR. CHOUDHRI: -- solicited people -- so,  
6 please, all of this is all supported and solicited by  
7 your client, and we'll get to the bottom of it --

8 MR. BALLASES: (Unintelligible)

9 MR. CHOUDHRI: -- which is why your client  
10 doesn't want to answer questions. I understand that.

11 THE WITNESS: You'll be a great jailhouse  
12 lawyer.

13 MR. CHOUDHRI: This is proper --

14 THE REPORTER: I'm sorry --

15 MR. BALLASES: Can we start the next --

16 MR. CHOUDHRI: Sorry?

17 MR. BALLASES: -- deposition? Can we start --

18 MR. CHOUDHRI: Hold on.

19 MR. BALLASES: -- the next deposition --

20 THE WITNESS: You're going to be a great  
21 lawyer --

22 MR. BALLASES: -- if Mr. Sather doesn't have  
23 any more questions?

24 THE WITNESS: You'll be a great lawyer in  
25 jail, man.

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1 MR. CHOUDHRI: Okay. So -- so that's your

2 goal --

3 MR. BALLASES: (Unintelligible)

4 MR. CHOUDHRI: -- going around telling

5 people --

6 THE REPORTER: I'm sorry --

7 MR. BALLASES: -- let's jump to the next

8 witness --

9 MR. CHOUDHRI: Please --

10 THE REPORTER: I'm sorry. Sorry. Sorry. I

11 am not getting Mr. Ballases' words on the record.

12 Mr. Ballases, if you have something to say, I

13 need just one speaker at a time. I'm not getting

14 anything you're saying at this point.

15 MR. BALLASES: Okay. What I'm saying is --

16 MR. CHOUDHRI: Please, Mr. Ballases, go ahead.

17 MR. BALLASES: -- (unintelligible) remains the

18 same. And if Mr. Sather has more questions, we're

19 happy to answer them. If he doesn't, then let's go to

20 the next witness.

21 MR. CHOUDHRI: No, no. We're -- we're not --

22 we're not playing any games here. Please play the

23 audio from the Court's ruling. Let's do that right

24 now --

25 MR. BALLASES: Okay (unintelligible) --

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1 MR. CHOUDHRI: -- so the record is crystal  
2 clear.

3 THE WITNESS: This is getting ridiculous.

4 MR. BALLASES: I'm going to end the deposition  
5 if Mr. Sather doesn't have any more questions, and we  
6 can jump to --

7 MR. CHOUDHRI: You can't end the deposition --

8 (Crosstalk)

9 MR. CHOUDHRI: Unless all parties agree to go  
10 off the record, we stay on the record. That's the  
11 rule, Mr. Ballases. The rule applies to everyone.

12 Please play --

13 MR. BALLASES: (Unintelligible)

14 MR. CHOUDHRI: -- the audio --

15 (Crosstalk)

16 MR. CHOUDHRI: Please play the audio --

17 MR. BALLASES: I'm going to shut it down if  
18 you don't take control of your client in the  
19 deposition. Your choice, Mr. Sather.

20 MR. CHOUDHRI: I'm here as a creditor. We're  
21 going to play the audio --

22 MR. BALLASES: (Unintelligible) Okay.

23 MR. CHOUDHRI: Mr. --

24 MR. BALLASES: We're going to -- we're all  
25 ready to go forward with the next witness. We're



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1 here, and we're ready to go forward.

2 Mr. Sather, if you have more questions, let me

3 know, and he will stay and answer them.

4 MR. SATHER: I am adjourning the deposition --

5 MR. CHOUDHRI: I have the floor. I have the

6 floor. I'm a creditor. I've cross-noticed this

7 deposition. Please play --

8 MR. BALLASES: (Unintelligible)

9 MR. CHOUDHRI: -- the oral ruling from the

10 Court right now. Go ahead.

11 MR. BALLASES: Mr. Sather --

12 (Crosstalk)

13 (Audio file played.)

14 THE REPORTER: I'm sorry. Sorry. I -- I'm

15 sorry. Mr. McCubbin, I cannot hear anybody when I

16 have multiple speakers at once. I don't know if you

17 want this on the record, but it's going in as

18 crosstalk because it's not coming through clearly.

19 MR. CHOUDHRI: Yes, Madam Court Reporter.

20 MR. BALLASES: Mr. Sather --

21 MR. CHOUDHRI: I have the floor.

22 MR. BALLASES: -- (unintelligible) the

23 questioning --

24 MR. CHOUDHRI: Please stop interrupting,

25 Mr. Ballases.

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1 MR. BALLASES: -- (unintelligible) not going  
2 to the next witness.

3 MR. CHOUDHRI: I am -- I am making the record.  
4 Mr. Ballases, please let me speak, and please don't  
5 interrupt me. Okay? Please --

6 MR. BALLASES: Okay --

7 MR. CHOUDHRI: -- play the audio ruling of  
8 Judge Robinson --

9 MR. BALLASES: We're going to --

10 MR. CHOUDHRI: -- so it's clear on the record.  
11 Go ahead.

12 (Audio file played.)

13 MR. CHOUDHRI: No, we're -- we're --

14 (Audio file continues playing.)

15 MR. MCCUBBIN: He just said any other  
16 creditor (unintelligible) --

17 THE REPORTER: I'm sorry, Mr. McCubbin. You  
18 just cut out for a second.

19 MR. MCCUBBIN: He just said --

20 MR. CHOUDHRI: Go and play that,  
21 Mr. McCubbin --

22 MR. MCCUBBIN: -- any other creditor --

23 MR. CHOUDHRI: -- just so the record is clear.  
24 Please go ahead --

25 MR. MCCUBBIN: The judge just stated any other

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1 creditor. I can replay it.

2 MR. CHOUDHRI: Please replay it for the record

3 so the record is crystal clear, and it's the judge --

4 So, Madam Court Reporter, so the record is  
5 clear, we are about to begin playing the oral ruling  
6 of Judge Robinson.

7 THE REPORTER: Okay. So are you wanting me to  
8 transcribe --

9 MR. CHOUDHRI: Yes.

10 THE REPORTER: -- this audio into the record?

11 MR. CHOUDHRI: Yes. Yes, Madam Court  
12 Reporter. He's about -- we're about to play the  
13 judge's ruling -- oral ruling on the record so that  
14 way we can have a simple and clean completion of this  
15 deposition and end this shenanigan and argument with  
16 Mr. Ballases.

17 Please, Mr. -- please, sir, please proceed  
18 with the record -- the audio ruling of Judge Robinson.  
19 Go ahead.

20 (Audio file played.)

21 THE REPORTER: I'm sorry. Sorry --

22 (Audio file continues playing.)

23 THE REPORTER: Sorry. The audio is not clear.  
24 The audio is not crystal clear. I hear Mr. Sather  
25 responding on the audio, and it's not clear.

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1 Typically in a transcript, we do not  
2 transcribe audio played.

3 MR. BALLASES: And I'm going to object --

4 MR. CHOUDHRI: Time out.

5 MR. BALLASES: I'm objecting --

6 MR. CHOUDHRI: We're going to e-mail you --  
7 Court Reporter, we're going to e-mail you this audio  
8 right now, and he's going to adjust the volume and  
9 play it again.

10 Go ahead. Play it again, please.

11 And, Court Reporter, let us know if you're  
12 getting a clear --

13 MR. BALLASES: Mr. Sather --

14 MR. CHOUDHRI: -- read on it. Okay?

15 MR. BALLASES: -- take control of the depo.  
16 This is a waste of time. It's a waste of the client's  
17 time --

18 MR. CHOUDHRI: Mr. Ballases, please -- please  
19 stop talking.

20 MR. BALLASES: -- (unintelligible) control of  
21 the deposition --

22 MR. CHOUDHRI: I have the floor --

23 MR. SATHER: You don't have it yet,  
24 Mr. Choudhri.

25 (Crosstalk)

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1 MR. BALLASES: Let's just jump to the next  
2 witness. I'm not allowing the questions to be asked.  
3 So it's not going to change. We're just wasting  
4 time --

5 MR. CHOUDHRI: We're playing the oral ruling  
6 of Judge Robinson. Please, Mr. Ballases, be quiet so  
7 we can play the ruling of Judge --

8 MR. BALLASES: (Unintelligible)

9 MR. CHOUDHRI: -- Judge Robinson's ruling.

10 MR. BALLASES: (Unintelligible) we're not  
11 going to play -- we're not -- that's not how  
12 depositions work, Mr. Choudhri. I'm sorry you like to  
13 play an attorney --

14 MR. CHOUDHRI: Well, please --

15 MR. BALLASES: -- but that's not how this  
16 works. So either I'm going to --

17 MR. CHOUDHRI: No. No, no. Please stop.

18 MR. BALLASES: Again, I'm going to get off --  
19 if you'd like to have another -- if you'd like to ask  
20 questions of my other clients, I'm happy to do that,  
21 and you're happy to ask questions, Mr. Sather. But  
22 these shenanigans are not --

23 MR. CHOUDHRI: If your --

24 MR. BALLASES: -- going to happen.

25 MR. CHOUDHRI: -- responses, Mr. Ballases, is

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gonna -- the shenanigans are yours, Mr. Ballases. If your responses are gonna be the same and you're not going to allow cross-notice creditors who are here, want to ask questions, then let's clarify this right now so we can complete the deposition properly, Mr. Ballases. Please don't obstruct the discovery right now.

Go ahead and play the oral ruling of Judge Robinson.

MR. BALLASES: I'm going to object --  
(Audio file played.)

THE REPORTER: I'm sorry. I'm sorry. I cannot hear when Mr. Ballases is speaking --

MR. CHOUDHRI: Mr. Ballases --

THE REPORTER: I need one person --

MR. CHOUDHRI: Mr. Ballases --

THE REPORTER: -- at a time.

MR. CHOUDHRI: -- intentionally --  
Mr. Ballases intentionally interferes, interrupts when we play the ruling of Judge Robinson that is gonna clarify this issue that cross-notice creditors are not allowed to participate and ask questions.

So please play the ruling of Judge Robinson.

And, Mr. Ballases, please refrain and be quiet, because the court reporter cannot take

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1 different people talking at the same time.

2 So please play the audio of Judge Robinson.

3 THE REPORTER: Sorry --

4 MR. CHOUDHRI: Go ahead.

5 THE REPORTER: Sorry. One second, please,  
6 before you play it.

7 Mr. Sather, this is your deposition  
8 transcript. Normally if I can't hear, I can't  
9 transcribe what's being said. It would need to be  
10 transcribed separately, because I'm not transcribing  
11 this on the record right now if I cannot hear it  
12 clearly.

13 MR. SATHER: All right. If you're unable to  
14 hear it clearly, I suggest that we move on. The judge  
15 said what he said. I do have one more question for --

16 MR. CHOUDHRI: Hold on, Mr. Sather. Just one  
17 second, please, before we conclude anything here. I  
18 do want to take a break before we do conclude  
19 anything, but I want to play this, and I think he can  
20 do it a little bit louder.

21 Let's try if you can hear it again. Ms. Court  
22 Reporter, let's try one more time.

23 MR. BALLASES: (Unintelligible)

24 MR. CHOUDHRI: Go ahead. Play the recording.

25 THE REPORTER: I'm sorry. Mr. Ballases --

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1 MR. BALLASES: The court reporter is saying  
2 (unintelligible).

3 THE REPORTER: I'm sorry. Mr. Ballases, could  
4 you please repeat that?

5 MR. BALLASES: Sure. I just was telling  
6 Mr. Choudhri that you have instructed him you cannot  
7 take it down in this manner, and so I'm just trying to  
8 tell him that he's wasting more time.

9 Mr. Sather --

10 MR. CHOUDHRI: Mr. Ballases, that's not what  
11 she said.

12 MR. BALLASES: -- if you want to go --

13 MR. CHOUDHRI: Mr. Ballases, we're going to  
14 try for her to hear it. Okay?

15 MR. BALLASES: Okay. Call us when you're  
16 ready --

17 MR. CHOUDHRI: So she's being very cooperative  
18 and polite.

19 Please, Mr. Ballases, be quiet.

20 Go ahead, Mr. -- sir. Please play the -- play  
21 the audio for the judge's ruling.

22 (Audio file played.)

23 MR. MCCUBBIN: He said, And any other  
24 creditor.

25 MR. CHOUDHRI: Can you please --



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1 MR. SATHER: Madam Reporter --

2 MR. CHOUDHRI: Please play the -- please play  
3 the whole recording.

4 MR. MCCUBBIN: The recording is starting --

5 MR. SATHER: Okay. Stop. Stop.

6 Madam Reporter, were you able to get the last  
7 excerpt?

8 MR. BALLASES: Ms. Court Reporter, you told us  
9 you couldn't take anything down in that manner. It'd  
10 have to be transcribed by the person who noticed the  
11 deposition, Mr. Sather. I assume you're going to  
12 stick by what you stated earlier.

13 THE REPORTER: Okay. It's not crystal clear.  
14 And because it's being played, I'm not sure where the  
15 audio and where it is stopping.

16 MR. CHOUDHRI: Well, let's take a five-,  
17 ten-minute break. Let's e-mail it to you, Madam Court  
18 Reporter, and so we can be efficient, and that way we  
19 don't have to interrupt the deposition and come back a  
20 different day and go seek court intervention. We can  
21 save the Court's time and not bother the Court.

22 But if Mr. Ballases insists that we have to  
23 bother the Court, then we'll seek emergency relief  
24 from the Court. But why don't we go ahead and e-mail  
25 you right now.

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1 And let's not allow anybody to bully anybody  
2 here. So, Mr. Ballases, please don't put words in her  
3 mouth.

4 So let's go ahead and take -- because at this  
5 point, this is -- I've cross-noticed the depo, and I  
6 want the record to be clear. If Mr. Ballases is going  
7 to continue to not allow questions despite the order  
8 by the judge being shown and heard for him -- so the  
9 record is clear. But we'll go ahead and take a --  
10 let's go and take a ten-minute break.

11 Madam Court Reporter, we're going to e-mail  
12 you the audio oral ruling of Judge Robinson so we can  
13 have a smooth deposition and complete discovery, and  
14 no one can obstruct this process. Okay? So can you  
15 provide your e-mail address, Madam Court Reporter,  
16 just so I have it?

17 MR. BALLASES: Mr. Sather, are we moving on to  
18 the next witness?

19 MR. SATHER: Yeah, I don't think this is  
20 productive. Mr. Ballases has indicated that he is not  
21 going to allow you to ask questions regardless of what  
22 the Court ruled, and so it is my intent at this time  
23 to adjourn the deposition subject to any future  
24 rulings from Judge Robinson. If Judge Robinson  
25 allows --

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1 MR. CHOUDHRI: Well --

2 MR. SATHER: -- the other parties to ask  
3 questions, I may have -- I reserve the right to ask  
4 follow-up questions.

5 MR. CHOUDHRI: So -- so I --

6 MR. BALLASES: Would you like to ask --

7 MR. CHOUDHRI: No, no. Hold --

8 MR. BALLASES: Would you like to proceed --  
9 (Crosstalk)

10 THE REPORTER: I'm sorry. I can't --

11 MR. BALLASES: -- with Osama Abdullatif or  
12 John Quinlan next?

13 THE REPORTER: Mr. Ballases -- sorry --

14 MR. CHOUDHRI: Hang on a second.

15 THE REPORTER: -- Mr. Ballases --

16 MR. CHOUDHRI: I have --

17 THE REPORTER: -- could you --

18 MR. CHOUDHRI: -- contacted the Court. I'll  
19 be e-mailing the Court right now. We are not  
20 suspending this deposition. I want to go ahead and  
21 pause the deposition. We are going to contact the  
22 Court. Okay?

23 Madam Court Reporter, would you give us your  
24 e-mail address, please?

25 THE REPORTER: And I just want to note,

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1 Mr. Ballases, I did not get anything you just said as  
2 you were speaking at the same time as Mr. Choudhri.

3 So do you have anything to put on the record?

4 MR. BALLASES: Myself, me?

5 THE REPORTER: Yes. I did not get what you  
6 were saying while -- after what Mr. Sather said.

7 MR. BALLASES: Sure. I just asked Mr. Sather  
8 if we're ready to move to the next witness. I think  
9 he indicated he was before Mr. Choudhri interrupted.  
10 And so that's all I'm asking.

11 MR. CHOUDHRI: So --

12 MR. BALLASES: Do we want to move to the next  
13 witness, Steve?

14 MR. CHOUDHRI: So this part is -- at this  
15 moment, I'd like to e-mail the court reporter the  
16 judge's oral ruling, and let's take a 15-minute break.  
17 And I've already reached out to the Court. The Court  
18 has asked for us to e-mail the Court for relief so we  
19 can complete the deposition and not waste the Court's  
20 time or disrupt the deposition and have to come back a  
21 different day. Everybody's schedules are -- are very  
22 important.

23 Mr. Ballases, in the event we are able to  
24 resume or reschedule the deposition, can you provide  
25 us dates?

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1 MR. BALLASES: Steve, can we move on? Can you  
2 control your client to any degree? I mean --

3 MR. SATHER: Mr. Choudhri --

4 MR. CHOUDHRI: I'm not his client.

5 MR. SATHER: -- is not my client in his  
6 individual capacity, and therefore --

7 MR. BALLASES: I understand he's a principal  
8 of Texas REIT, the debtor.

9 MR. SATHER: He's also asserting his right to  
10 appear as a pro se creditor and that I do not have any  
11 control over that capacity. If he wishes to contact  
12 the Court, that is his business.

13 MR. BALLASES: I understand that, but you've  
14 noticed the deposition. Do we want to proceed with  
15 the next witness? I've got my --

16 MR. CHOUDHRI: And we --

17 MR. BALLASES: -- clients here. We've  
18 rearranged our schedules for you. Do you want to take  
19 the deposition or not? It's up to you, Steve.

20 MR. SATHER: I want to proceed --

21 MR. CHOUDHRI: We are resuming. We are  
22 pausing the deposition, and we're going to have a  
23 conversation, and we'll come back in 15 minutes on the  
24 record.

25 But in the meantime, Court Reporter, can I

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1 have your e-mail address so we can e-mail you the  
2 audio ruling of the judge? And I think that'll solve  
3 any issues and resolve the -- the objection or  
4 position that Mr. Ballases is taking that the judge  
5 said something the judge didn't say, so it's clear.  
6 If I can get your e-mail address, we can e-mail you  
7 the audio right now, and we can resume.

8 Let's -- let's resume the deposition at noon.  
9 It's 11:40 right now.

10 THE REPORTER: Okay. May I go off the record,  
11 please? If we're pausing?

12 MR. CHOUDHRI: Please.

13 MR. SATHER: Yes, you may. Yes.

14 MR. BALLASES: Yes, you can go off the record.

15 THE REPORTER: Okay. So I am off the record.

16 (Discussion held off the record.)

17 (A recess was taken.)

18 THE REPORTER: Back on the record.

19 MR. BALLASES: So this is Michael Ballases,  
20 counsel for John Quinlan, Omar Khawaja, and Osama  
21 Abdullatif. There is no written order, but I did  
22 listen to the recording, and it appears he did say  
23 "creditors." And so I was mistaken, and so I will  
24 allow creditors to ask questions, however, in the  
25 limited capacity that he stated in the oral hearing.

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1 So we can go forth with Mr. Khawaja.

2 Ms. Hood, if you want to ask questions, go for  
3 it.

4 MS. HOOD: Thanks. Okay. Steve, I may use  
5 your exhibits, so if you can have those by the --

6 MR. SATHER: I'm happy to --

7 MS. HOOD: -- by the ready for me, I  
8 appreciate it.

9 MR. SATHER: -- put them up on the screen if  
10 you need them.

11 MS. HOOD: Thank you.

12 BY MS. HOOD:

13 Q. Mr. Khawaja, my name is Lori Hood. We've  
14 never met before; correct?

15 A. That's correct.

16 Q. And I understand that you are an attorney  
17 licensed in the state of Texas; correct?

18 A. That's also correct.

19 MR. BALLASES: Objection. Form.

20 Q. (BY MS. HOOD) And do you practice law?

21 A. Yes, ma'am.

22 MR. BALLASES: Objection. Form.

23 Q. (BY MS. HOOD) And do you have -- where do you  
24 practice law?

25 MR. BALLASES: Objection --

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1 A. At my own law firm.

2 Q. (BY MS. HOOD) And what is the name of that  
3 law firm?

4 A. The Law Offices of -- and my name.

5 Q. And where is that? Where are your offices  
6 located?

7 MR. BALLASES: Objection. Form.

8 A. On Richmond and Sage.

9 MS. HOOD: If you'll -- thanks, Steve. Can  
10 you scroll down, Steve?

11 MR. SATHER: Certainly.

12 Q. (BY MS. HOOD) In the proof -- if I understand  
13 your testimony correctly, you stated that your proof  
14 of claim is based upon some judgments that you had  
15 assigned to you by virtue of purchasing those  
16 judgments from third parties; is that correct?

17 MR. BALLASES: Objection. Form.

18 A. Yes.

19 MS. HOOD: Mr. Ballases, what is the basis of  
20 your objection?

21 MR. BALLASES: Asked and answered. We've gone  
22 through all this.

23 MS. HOOD: And I understand that,  
24 Mr. Ballases, but you were objecting quite frequently  
25 to Mr. Sather's questions, and I just want to make



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1 sure that the record is clear with regard to what your  
2 objection is. I didn't know what your objection was  
3 during his questioning, and so I'm just trying to make  
4 sure that if the question needs to be rephrased or has  
5 come out at a different angle, that the question is  
6 clear to your client and that we're not going to deal  
7 with objections in the transcript later on. Is that  
8 fair?

9 MR. BALLASES: I'm going to make my objections  
10 according to the rules. You can respond how you think  
11 appropriate pursuant to the rules.

12 MS. HOOD: Okay. I appreciate that.

13 Oops. What's that? No, take that down.

14 MR. SATHER: Sorry.

15 Q. (BY MS. HOOD) All right. So -- okay. So  
16 this proof of claim is your individual proof of claim;  
17 is that correct?

18 A. My individual proof of claim? It looks like  
19 my name is on there as well as Mr. Quinlan's and  
20 Mr. Abdullatif's.

21 Q. Right. But this isn't a proof of claim you  
22 filed on behalf of your law office; correct?

23 A. Oh, yeah. Yeah, that's filed on my behalf,  
24 correct. Mm-hmm.

25 Q. And if I understand your testimony, the value

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1 of the property that is included in Section 9 consists  
2 of the total of the three judgments that form the  
3 basis of your proof of claim; correct?

4 A. That's right.

5 Q. And you've used these three judgments as the  
6 basis for filing an adversary action in the Southern  
7 District but also attached the adversary action to  
8 your proof of claim; is that correct?

9 A. That sounds correct.

10 Q. Okay. So if I can drill down, we've got --  
11 the basis for your proof of claim was, one, three  
12 judgments and, two, an adversary action; is that  
13 correct?

14 A. That sounds correct.

15 Q. All right. And the basis of the adversary  
16 action were the three judgments; is that correct?

17 MR. BALLASES: Objection. Form.

18 A. Sorry. Can you repeat the question?

19 Q. (BY MS. HOOD) Yeah. The basis of your  
20 adversary action is the three judgments that you claim  
21 you're unable to collect; is that correct?

22 A. That's correct.

23 MR. BALLASES: I'm going to object to form.

24 MS. HOOD: And what is the basis of your  
25 objection?

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1 MR. BALLASES: I think it's vague and  
2 ambiguous and misstates the evidence. I mean, the  
3 petition or the complaint speaks for itself.

4 MS. HOOD: So last time I checked, documents  
5 don't talk. So let me correct my question just to  
6 make it clear.

7 Q. (BY MS. HOOD) Mr. Khawaja, in your adversary  
8 action which is attached to your proof of claim, you  
9 reference three judgments; is that correct?

10 A. Yes.

11 Q. And you testified earlier, when Mr. Sather was  
12 asking you questions, that the reason you brought the  
13 adversary action was your inability to collect on  
14 those judgments and that somehow all of these related  
15 entities are alter egos of Mr. Choudhri; correct?

16 A. Yes.

17 Q. Okay. Let me drill down on the judgments.  
18 You state that you're an assignee of two of  
19 these judgments; is that correct?

20 A. That's correct.

21 MR. BALLASES: Objection. Form.

22 MS. HOOD: All right. What is the basis of  
23 your objection?

24 MR. BALLASES: Asked and answered. This has  
25 been already discussed and answered clearly by

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1 Mr. Sather.

2 MS. HOOD: Okay. I disagree --

3 MR. BALLASES: You're just rehashing --

4 MS. HOOD: -- but -- okay. Let me finish.

5 Q. (BY MS. HOOD) You have --

6 MS. HOOD: Steve, can you go to the basis of  
7 the damages that were attached? And thank you for  
8 being my paralegal. I appreciate it.

9 Q. (BY MS. HOOD) All right. So Judgment  
10 Number 1, you have an assigned interest in; correct?

11 A. Yes.

12 MR. BALLASES: Objection. Form.

13 Q. (BY MS. HOOD) Before you purchased your  
14 assignment, did you do any due diligence on the  
15 underlying pleadings in the case?

16 MR. BALLASES: Objection. Form.

17 A. Yes.

18 Q. (BY MS. HOOD) And because you did underlying  
19 due diligence in the case, you understand that nowhere  
20 in that case is there any allegation of fraudulent  
21 transfer; correct?

22 A. In which case?

23 Q. Judgment Number 1, Davy versus Heil.

24 A. I mean, I didn't get into the facts of that  
25 case. There's a final judgment, I purchased it, and

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1 it was assigned to me. Why do I care what happened in  
2 that case?

3 Q. Okay. Well, I just asked you if you looked at  
4 the underlying pleadings in the case, and you said  
5 yes. So now your testimony is that you did not look  
6 at the underlying pleadings.

7 A. I mean, I skimmed through them.

8 Q. And as you were skimming through them, did you  
9 understand that there was no cause of action for  
10 fraudulent transfers?

11 A. I don't recall.

12 Q. Have you read the judgment?

13 A. Yes, I have.

14 Q. And did you read it before you purchased it?

15 A. Yes, I did.

16 Q. And do you understand that nowhere in that  
17 judgment is there a finding of fraudulent transfers?

18 A. Okay. If you say so.

19 Q. Well, no, I'm asking you if you've read it and  
20 if you understand that.

21 MR. BALLASES: Objection. Form.

22 A. I mean, if there isn't, I'm gonna take your  
23 word for it and say there isn't.

24 Q. (BY MS. HOOD) Okay. Well, take my word for  
25 it. There isn't.

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1 Did you purchase this judgment at a discount?

2 MR. BALLASES: Objection. Form.

3 A. I don't recall.

4 MS. HOOD: What's the basis for your  
5 objection?

6 MR. BALLASES: Lacking relevance. The purpose  
7 of the deposition is to understand why the proof of  
8 claim was filed and why it is now being withdrawn.

9 MS. HOOD: All right. Well, I think --

10 (Crosstalk)

11 MR. BALLASES: (Unintelligible) an underlying  
12 matter in the Southern District.

13 MS. HOOD: All right. I disagree with your  
14 analysis, but we can argue that another day.

15 Q. (BY MS. HOOD) So you don't recall how much  
16 you purchased the judgment for.

17 A. Correct.

18 Q. And you are one of three assignees of this  
19 judgment; correct?

20 A. That's correct.

21 MR. BALLASES: Objection. Form.

22 Q. (BY MS. HOOD) Before you purchased the  
23 judgment, did you have an agreement with the other two  
24 claimants, Mr. Quinlan and Mr. Abdullatif, as to why  
25 you were purchasing the judgment?

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1 MR. BALLASES: Objection. Form.

2 A. Did I have an agreement as to why we were  
3 purchasing the judgment? I mean, the purpose of  
4 purchasing the judgment is to collect on a judgment,  
5 so that was the agreement.

6 Q. (BY MS. HOOD) So you sat down with the other  
7 two gentlemen, and the three of you decided to  
8 purchase this judgment together.

9 A. I don't recall if we sat down together  
10 anywhere and had that -- a sit-down discussion about  
11 what was gonna happen. I think maybe that did.

12 Q. Maybe it did, or maybe it didn't?

13 A. Yeah. Maybe it was a phone call; maybe it was  
14 a sit-down meeting.

15 Q. When did you --

16 MR. BALLASES: And just for the record --

17 Q. (BY MS. HOOD) Can you tell us when the  
18 judgment --

19 MR. BALLASES: Just so that I have --

20 THE REPORTER: I'm sorry. I'm sorry.

21 MS. HOOD: Sorry.

22 THE REPORTER: I hear somebody else speaking.

23 MR. BALLASES: Sure. I just -- I wanted to  
24 caution Ms. Hood.

25 You're getting real close to attorney-client

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1 privilege and/or work product legal privilege. So I  
2 don't think you're there yet, but you're close, so I  
3 just wanted to warn you to keep that in mind.

4 Q. (BY MS. HOOD) Sure. And, Mr. Khawaja, please  
5 understand that I don't want to know what you talked  
6 about with your lawyers, okay, ever, or what your  
7 lawyers have discussed with you regarding their  
8 strategy. Okay? So if you feel like you have to  
9 reveal that kind of information in response to my  
10 question, I don't want to know that stuff. Okay?

11 And certainly you understand as a lawyer that  
12 you have the right to discuss this kind of response  
13 with your lawyer prior to answering; right?

14 A. Yes.

15 Q. Can you tell us when you -- when you purchased  
16 the judgment?

17 A. Sometime before this proof of claim was filed.  
18 I don't recall exactly when, no.

19 Q. Do you recall the year?

20 A. I think it was --

21 MR. BALLASES: Objection. Form.

22 A. I think it was 2023.

23 Q. (BY MS. HOOD) And how did it come about that  
24 this judgment came across your desk to be purchased?

25 MR. BALLASES: Objection. Form.



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1 Q. (BY MS. HOOD) You can answer.

2 A. I mean, that's -- that's privileged

3 information that I'm not gonna discuss.

4 MR. BALLASES: I'll go ahead and assert the  
5 attorney work product, attorney-client privilege. I'm  
6 going to instruct him not to answer.

7 Q. (BY MS. HOOD) How do you typically learn of  
8 judgments that are available for you to purchase?

9 A. I would say typically it is something that's  
10 brought to my attention by a third party.

11 Q. And which third party brought this particular  
12 judgment to your attention?

13 MR. BALLASES: Objection. Form. Assertion of  
14 attorney-client and work product legal privileges.  
15 Instruct client not to answer.

16 Q. (BY MS. HOOD) Did Mr. Abdullatif bring this  
17 judgment to your attention?

18 MR. BALLASES: Same assertion of privilege,  
19 same instruction to the client not to answer. It  
20 violates attorney-client and attorney work product.

21 Q. (BY MS. HOOD) Mr. Khawaja, do you have any  
22 sort of agreement with Mr. Abdullatif or Mr. Quinlan  
23 regarding a joint prosecution of this proof of claim?

24 A. We do.

25 Q. And is that in writing?

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1 MR. BALLASES: Also joint litigation

2 privilege, I'll assert.

3 Q. (BY MS. HOOD) Okay.

4 A. I'm not gonna answer.

5 Q. Is your -- is your agreement in writing?

6 MR. BALLASES: Instruct client not to answer.  
7 He doesn't need to give work product, attorney-client,  
8 or joint litigation privilege information away.

9 Q. (BY MS. HOOD) Back to my question.  
10 Mr. Khawaja, do you have an agreement in writing with  
11 Mr. Abdullatif and Mr. Quinlan with regard to pursuing  
12 this proof of claim?

13 MR. BALLASES: I'm going object again to the  
14 question and assert the legal privileges of  
15 attorney-client, work product, also joint litigation  
16 privilege and instruct the client not to answer.

17 Q. (BY MS. HOOD) Mr. Khawaja, are you adhering  
18 to your -- to your counsel's instruction?

19 A. I am.

20 Q. And refusing to answer my question?

21 A. On advice of counsel, yes.

22 Q. With regard to this particular Davy-Heil  
23 judgment, do you know Mr. Heil?

24 A. I don't.

25 Q. Do you know Mr. Oakum?

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1 A. I don't.

2 Q. Do you know Renee Davy?

3 A. Not personally.

4 Q. Not personally? How else would you know her?

5 A. I've seen videos of her online.

6 Q. Doing what?

7 A. Stating that Mr. Choudhri's a fraud and a

8 thief and shouldn't be trusted.

9 Q. Have you ever spoken to her?

10 A. I have not.

11 Q. When you purchased this judgment, who did you

12 pay?

13 MR. BALLASES: Objection. Form.

14 I'm going to also -- it's harassing and

15 oppressive. I'm also going to assert the

16 attorney-client, attorney work product, and joint

17 litigation privilege and instruct the client not to

18 answer.

19 Q. (BY MS. HOOD) Mr. Khawaja, are you going to

20 follow your attorney's instruction and not answer my

21 question?

22 A. I am.

23 Q. When you guys purchased your assignment of

24 this judgment, the Davy-Heil judgment, did you each

25 provide separate payment, or did it come from one

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1 source?

2 MR. BALLASES: I'm going to assert the same  
3 objection and the same assertions of legal privilege  
4 and instruct the client not to answer, as I did to the  
5 question before.

6 Q. (BY MS. HOOD) Mr. Khawaja, are you going to  
7 follow your counsel's instruction and refuse to answer  
8 my question?

9 A. I am.

10 Q. Mr. Khawaja, when you purchased your interest  
11 in this judgment, did you purchase it via wire  
12 transfer or a check? Cash? How did you purchase it?

13 MR. BALLASES: I'm going to assert the same  
14 legal objections and the same assertions of legal  
15 privilege and instruct client not to answer, as I did  
16 with the previous question.

17 Q. (BY MS. HOOD) Mr. Khawaja, are you going to  
18 adhere to your client's (sic) instruction and refuse  
19 to answer my question?

20 A. My counsel's. Yes, I am.

21 Q. Mr. Khawaja, do you know a gentleman by the  
22 name of Wayne Dolcefino?

23 A. I've seen him online.

24 Q. And was it one of Mr. Dolcefino's videos in  
25 which Ms. Davy appeared?

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1 A. I think so, yes.

2 MR. BALLASES: Objection. Form.

3 Q. (BY MS. HOOD) Have you ever met

4 Mr. Dolcefino?

5 A. I've met him, yes.

6 MR. BALLASES: Objection --

7 Q. (BY MS. HOOD) In connection with any of your

8 cases related to Mr. Choudhri?

9 A. No.

10 MR. BALLASES: Objection. Form.

11 Q. (BY MS. HOOD) With regard to this Judgment

12 Number 1 that was assigned to you, how much of -- how

13 much do you own of this judgment?

14 THE WITNESS: I think that goes to the

15 privilege again.

16 MR. BALLASES: I'm going to object to the

17 question as being oppressive and harassing and assert

18 the attorney-client, attorney work product, and joint

19 litigation privilege and instruct him not to answer.

20 Q. (BY MS. HOOD) Mr. Khawaja, are you going to

21 adhere to your lawyer's instruction not to answer my

22 question?

23 A. I am.

24 Q. As you sit here today, you're not going to

25 tell me how much of this \$501,513.85 judgment that you

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1 own.

2 MR. BALLASES: Objection. Form.

3 A. On advice of counsel, I will not answer that  
4 question.

5 Q. (BY MS. HOOD) And you testified that you  
6 purchased this judgment sometime last year; correct?

7 MR. BALLASES: Objection. Form.

8 A. I believe so, yes.

9 Q. (BY MS. HOOD) Okay. And what have you done  
10 to try and collect this judgment?

11 A. Well, we filed --

12 MR. BALLASES: Objection. Form.

13 A. -- in Bankruptcy Court or, I guess, in our  
14 proof of claims. And I think -- I think that's it at  
15 this stage.

16 Q. (BY MS. HOOD) Have you filed any  
17 post-judgment discovery in the underlying lawsuit in  
18 the 152nd?

19 A. I don't -- I don't -- I'm not aware of that.

20 Q. Have you hired a lawyer to pursue  
21 post-judgment discovery or collection of this  
22 judgment?

23 A. The only lawyer I've hired is Mr. Ballases.

24 Q. And you're certainly not aware of Mr. Ballases  
25 doing anything to try to collect this judgment outside

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1 of the bankruptcy action; correct?

2 MR. BALLASES: Objection. Form.

3 Q. (BY MS. HOOD) You can answer.

4 A. I'm not aware.

5 Q. As an attorney in the state of Texas,  
6 certainly you're aware of the fact that, as a judgment  
7 creditor, you have the right to pursue post-judgment  
8 collection efforts within the confines of the Court  
9 that issued the judgment; correct?

10 A. Sure.

11 Q. And you've chosen not to avail yourselves of  
12 those opportunities; correct?

13 MR. BALLASES: I'm going to go ahead and  
14 object to the question as misleading, also oppressive  
15 and harassing, and assert attorney-client, attorney  
16 work product, and joint litigation privilege.

17 What we do for collection, you do not get to  
18 ask about to aid Mr. Choudhri and Jetall and his  
19 companies to hide assets any further. So we're not  
20 going to answer that.

21 MS. HOOD: All right. I object to any  
22 commentary about me helping anybody do anything. All  
23 right? I'm here representing a creditor, and I'm  
24 trying to determine the basis for the filing of this  
25 proof of claim. And part of that issue is any attempt

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1 by the judgment creditor to collect the judgment  
2 outside of filing a proof of claim in a bankruptcy  
3 action, that has nothing to do with the underlying  
4 judgment.

5 Q. (BY MS. HOOD) Mr. Khawaja, do you personally  
6 know of any action taken in the public forum by you to  
7 collect this judgment outside of this bankruptcy  
8 action?

9 A. I'm not aware of any.

10 MR. BALLASES: I'm further going to instruct  
11 you: Don't answer any more questions regarding what  
12 we've done to collect because that gets into attorney  
13 work product, also attorney-client, and joint  
14 litigation privilege.

15 THE WITNESS: I understand.

16 MS. HOOD: And certainly, Mr. Ballases, I  
17 appreciate the nuances and everything else. And  
18 again, I don't want to know anything about your  
19 strategy or anything else. That's why I asked for  
20 public record, because I can't find anything in the  
21 public record that shows any attempt to try to collect  
22 this judgment. And so I'm just trying to clarify and  
23 get commentary and testimony from your client  
24 confirming that.

25 MR. BALLASES: I appreciate that, but we don't



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1 need to get into anything that could aid your client  
2 or the principal who owns your client to hide assets  
3 any further.

4 MS. HOOD: I'm going to object to the sidebar  
5 commentary there.

6 Q. (BY MS. HOOD) The judgment that you bought,  
7 the judgment debtor is Jetall Companies, Inc.;  
8 correct?

9 A. Correct.

10 Q. Certainly that judgment does not include my  
11 client as a judgment debtor; correct?

12 A. Yeah, it's not -- does not include? Correct.

13 Q. It certainly doesn't include Mrs. Choudhri as  
14 a judgment debtor; correct?

15 A. It does not include them as a judgment debtor,  
16 correct.

17 Q. It doesn't include Texas REIT as a judgment  
18 debtor either; right?

19 A. Correct.

20 Q. On Judgment Number 2, I think you testified  
21 that you don't own any part of that judgment; correct?

22 A. Judgment Number 2, I believe I do own part of  
23 it.

24 Q. The Abdullatif judgment?

25 A. Okay. No, I do not. Sorry.

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1 Q. Okay. Are you aware of the fact that that  
2 judgment has been bonded around?

3 A. I'm not aware of --

4 MR. BALLASES: Objection. Form.

5 A. I'm not aware of that.

6 Q. (BY MS. HOOD) And when you filed the proof of  
7 claim that included Judgment Number 2, did you do any  
8 due diligence on that judgment in order to satisfy  
9 yourself that that judgment was not bonded around?

10 MR. BALLASES: Objection. Form.

11 A. I -- minimally, not -- minimally.

12 Q. (BY MS. HOOD) What do you mean "minimally"?

13 A. Meaning it was a final judgment, and that's  
14 how I -- that was what I understood it to be.

15 Q. Certainly as a lawyer in the state of Texas,  
16 you understand that when a judgment is superceded,  
17 that that stays any collection activities; correct?

18 MR. BALLASES: I'm going to object to the  
19 question as misleading and harassing and oppressive.

20 Q. (BY MS. HOOD) You can answer --

21 A. I'm not aware of that --

22 Q. You're not aware of that?

23 A. I'm not aware of that being -- I'm not aware  
24 of the judgment being superceded.

25 Q. And did you take any independent actions to

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1 determine whether or not this judgment, which is on  
2 appeal, had been superceded?

3 A. No.

4 Q. Judgment Number 3, this HSLLP judgment.

5 A. Yes.

6 Q. All right. That judgment, when did you  
7 purchase that judgment?

8 A. I think 2023, if I recall correctly.

9 Q. And how did you become aware that that  
10 judgment was available to purchase?

11 MR. BALLASES: Objection. Form. Harassing  
12 and oppressive. I'm also going to assert  
13 attorney-client, attorney work product, and joint  
14 litigation privilege and instruct the client not to  
15 answer.

16 Q. (BY MS. HOOD) Mr. Khawaja, are you going to  
17 adhere to your client's -- excuse me -- to your  
18 lawyer's instructions?

19 A. I am.

20 Q. And if I understand your testimony, you are  
21 one of three owners also of this judgment; is that  
22 correct?

23 MR. BALLASES: Objection. Form.

24 A. That's correct.

25 Q. (BY MS. HOOD) And can you tell me how you

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1 paid for the purchase of this judgment?

2 MR. BALLASES: I'm going to object to the  
3 question again as harassing and oppressive, assert the  
4 attorney-client legal privilege, the work product  
5 legal privilege, and the joint litigation legal  
6 privilege and instruct the client not to answer.

7 Q. (BY MS. HOOD) Mr. Khawaja, are you going to  
8 adhere to your lawyer's instruction?

9 A. Yes.

10 Q. Mr. Khawaja, can you tell me whether you paid  
11 for -- excuse me. Strike that.

12 Can you tell me who you paid when you  
13 purchased this assignment of this judgment?

14 MR. BALLASES: I'm going to assert the same  
15 objection I just levied to the prior question as well  
16 as the same assertion of legal privileges to the prior  
17 question and instruct the client not to answer, just  
18 like the prior question.

19 Q. (BY MS. HOOD) Mr. Khawaja, are you going to  
20 adhere to your lawyer's instruction and not answer my  
21 question as to who you paid for the purchase of this  
22 judgment?

23 A. I am.

24 Q. I see that this judgment -- the judgment  
25 creditor is Hoover Slovacek; correct?

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1 A. That appears correct.

2 Q. And that's the same law firm that is

3 representing you here today; correct?

4 A. That's correct.

5 MR. BALLASES: Objection. Form.

6 Q. (BY MS. HOOD) Do you have any joint defense

7 agreements with Hoover Slovacek?

8 MR. BALLASES: Objection. Form. I think --

9 well, objection. Form.

10 A. I'm not aware.

11 Q. (BY MS. HOOD) Do you have any prosecution

12 agreements with Hoover Slovacek?

13 MR. BALLASES: Objection. Form.

14 A. I'm not aware of any.

15 Q. (BY MS. HOOD) At the time that you purchased

16 this judgment, were you represented by Hoover

17 Slovacek?

18 MR. BALLASES: Objection. Form.

19 A. At the time I purchased the judgment, I was

20 represented by nobody.

21 Q. (BY MS. HOOD) So you were representing

22 yourself?

23 A. Correct.

24 Q. Who drafted the assignments?

25 MR. BALLASES: Objection. Form.

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1 A. I think that's a privileged answer.

2 MR. BALLASES: Also assert the same legal  
3 privileges we asserted in the previous questions,  
4 which would be attorney-client, attorney work product,  
5 and joint litigation and instruct the client not to  
6 answer.

7 Q. (BY MS. HOOD) Mr. Khawaja, are you going to  
8 adhere to your lawyer's instructions and not answer my  
9 question?

10 A. Yes.

11 Q. When you purchased the assignment of this  
12 judgment and the other two also purchased their  
13 portion of the judgment, was it all done at one time?

14 MR. BALLASES: Objection. Form.

15 I'm also going to assert the same legal  
16 privileges and instruct the client not to answer, as I  
17 did with the previous question.

18 Q. (BY MS. HOOD) Mr. Khawaja, are you going to  
19 adhere to your client's instruction and not answer my  
20 question as to the timing of the purchase of the  
21 assignment by the three of you?

22 A. Yes.

23 Q. Did you purchase the assignment of this  
24 judgment from Mr. Abdullatif?

25 MR. BALLASES: Objection. Form. Same

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1 objections, same assertions of legal privilege, same  
2 instruction not to answer based on those legal  
3 privileges as the question before.

4 Q. (BY MS. HOOD) Are you going to follow your  
5 lawyer's instruction and not answer my question as to  
6 who you purchased the assignment from?

7 A. Yes.

8 Q. When you purchased the assignment and you were  
9 representing yourself, what lawyers did you deal with  
10 for the other purchasers?

11 MR. BALLASES: Objection. Form. I'm also  
12 going to assert the same attorney work product and  
13 attorney -- joint litigation legal privilege and  
14 instruct the client not to answer.

15 Q. (BY MS. HOOD) Mr. Khawaja, are you going to  
16 adhere to your lawyer's instructions and not answer my  
17 questions?

18 A. Yes.

19 Q. Okay. When you purchased your assignment, was  
20 Mr. Abdullatif represented by counsel?

21 MR. BALLASES: Objection. Form.

22 Asserting the same legal privileges as the  
23 previous question and instructing client not to answer  
24 as I did with the previous question.

25 Q. (BY MS. HOOD) Mr. Khawaja, are you going to

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1 adhere to your client's instruction -- or to your  
2 lawyer's instruction and not answer my question as to  
3 whether or not Mr. Abdullatif had a lawyer at the time  
4 of the purchase?

5 A. Yes.

6 Q. At the time you purchased your assignment of  
7 this judgment, was Mr. Quinlan represented by counsel?

8 MR. BALLASES: Objection. Form.

9 I'm also going to assert the same legal  
10 privileges as I did before and instruct the client not  
11 to answer.

12 Q. (BY MS. HOOD) Mr. Khawaja, are you adhering  
13 to your counsel's instructions and not answering my  
14 question as to whether or not Mr. Quinlan was  
15 represented by counsel at the time of the assignment  
16 of the judgment?

17 A. Yes.

18 Q. Does your assignment include just your  
19 signature, or is it an assignment that includes the  
20 other purchasers' signatures?

21 MR. BALLASES: I'm going to object to the  
22 question -- object to the form of the question.  
23 Excuse me.

24 A. I don't -- I don't recall.

25 Q. (BY MS. HOOD) Do you have a physical copy, or



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1 do you have the original of this assignment?

2 A. I believe I do somewhere, not with me today.

3 I'm sure it was provided to me.

4 Q. The copy or the original?

5 A. The copy.

6 Q. Do you know who holds the original of the

7 assignment?

8 A. I don't.

9 Q. Because you don't know who holds the original  
10 of the assignment, you can't tell us whether or not  
11 the assignment has been paid; correct?

12 MR. BALLASES: Objection. Form.

13 I'm going to assert the attorney-client and  
14 attorney work product and attorney joint -- or excuse  
15 me -- joint litigation privilege and instruct the  
16 client not to answer.

17 A. I'm going to follow advice of counsel.

18 Q. (BY MS. HOOD) And as you sit here today, you  
19 can't tell us who holds the original of this  
20 assignment.

21 A. I can't.

22 MR. BALLASES: Objection. Form.

23 Q. (BY MS. HOOD) You can't?

24 A. I cannot.

25 MR. BALLASES: Objection. Form.

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1 Q. (BY MS. HOOD) Can you tell me why you didn't  
2 include a copy of the assignment with your proof of  
3 claim?

4 MR. BALLASES: Objection. Form.

5 Just -- and I'm -- and I apologize because I  
6 know I'm not supposed to talk right now, but it's  
7 attached to the actual complaint in the Southern  
8 District, so you can pull it up. It's public record.

9 MR. CHOUDHRI: Mr. Ballases, please stop  
10 coaching the witness.

11 MR. BALLASES: Be quiet.

12 MR. CHOUDHRI: I'm sorry. Mr. Khawaja, did  
13 you say something?

14 MS. HOOD: Okay --

15 MR. BALLASES: No, I told you to be quiet.  
16 This is Mr. Ballases.

17 MS. HOOD: Okay. This is my time. Okay? You  
18 guys can bicker and do your little boy thing when I'm  
19 not talking.

20 Q. (BY MS. HOOD) So if I understand correctly,  
21 this adversary action, which is based upon two  
22 judgments that you claim to have an assignment in, was  
23 originally filed in the Southern District of Texas; is  
24 that correct?

25 A. That's correct.

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1 Q. And then you took that adversary and used it  
2 as -- as an exhibit to your proof of claim that you  
3 then filed in this action; correct?

4 A. That's correct.

5 Q. And if I understand your testimony, along with  
6 this adversary action, you filed lis pendens against  
7 the debtor's property in this action; correct?

8 A. That's correct.

9 Q. And if I remember the lis pendens, you did not  
10 sign that lis pendens; correct?

11 A. Correct.

12 Q. Did Mr. Abdullatif have your permission to  
13 sign that lis pendens that was filed against the  
14 debtor's property in this action?

15 A. Yes.

16 Q. And when did you give him permission to file  
17 that lis pendens?

18 A. I'm not sure. I'm assuming sometime before it  
19 was filed.

20 Q. Was it done prior to the time that you brought  
21 the adversary action in the Southern District of  
22 Texas?

23 A. I don't know.

24 MS. HOOD: Steve, my trustee paralegal, can  
25 you bring up the first lis pendens, the supplemental

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1 lis pendens, which I think is Exhibit -- yeah --  
2 Exhibit 2, yeah. Can you go down to the signature  
3 page?

4 MR. SATHER: Yes.

5 Q. (BY MS. HOOD) All right. So Exhibit 2 is the  
6 supplemental lis pendens that you authorized  
7 Mr. Abdullatif to file against the debtor's property  
8 in this action; correct?

9 A. That's correct.

10 Q. All right. And the date of that says  
11 August 22nd, 2023. Do you agree with me?

12 A. Yes.

13 Q. Okay. And would it be fair to say that you  
14 gave Mr. Abdullatif your authority to sign on your  
15 behalf somewhere around August 22nd, 2023?

16 A. It could've been before that, but it sounds  
17 correct.

18 Q. Did you have a conversation with  
19 Mr. Abdullatif about the filing of the lis pendens?

20 MR. BALLASES: I'm going to object to the  
21 question. I'm also going to assert the  
22 attorney-client, attorney work product, and joint  
23 litigation privilege and instruct the client not to  
24 answer.

25 A. On advice of counsel, I'm not answering any

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1 questions regarding my conversations with

2 Mr. Abdullatif or Mr. Quinlan.

3 Q. (BY MS. HOOD) Did you prov -- the authority

4 that you provided to Mr. Abdullatif for you -- for him

5 to sign on your behalf this lis pendens, was that

6 given verbally or in writing?

7 MR. BALLASES: Objection. Form.

8 Same assertion of legal privilege, same

9 instruction not to answer.

10 Q. (BY MS. HOOD) Mr. Khawaja, are you going to

11 adhere to your client's (sic) instructions and not

12 answer my question about how you gave permission to

13 Mr. Abdullatif --

14 A. Yes, I am.

15 MS. HOOD: Steve, can you bring up the --

16 Exhibit Number 3?

17 Q. (BY MS. HOOD) Exhibit Number 3 is the second

18 supplemental lis pendens that was filed also on the

19 debtor's property, and it looks to me that that also

20 is dated August 22nd, 2023. Is that accurate?

21 A. That looks accurate.

22 Q. All right. And is it fair to say that you

23 again gave Mr. Abdullatif permission or authorized him

24 to sign on your behalf somewhere around August 22nd of

25 2023?

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1 A. Or prior to that, yes.

2 Q. Certainly you didn't give him permission to  
3 file it before you actually were an owner in the  
4 judgment; correct?

5 A. That's correct.

6 Q. And again, just to summarize your testimony,  
7 you think you recall purchasing your assignment in  
8 this judgment sometime in 2023; correct?

9 A. That's correct.

10 Q. So we've got somewhere between January and  
11 August 22nd that you purchased your interest in this  
12 judgment; correct?

13 A. That sounds right.

14 MR. BALLASES: Ms. Hood, I don't mean to  
15 derail your testimony, but if you look at the  
16 complaint itself, it says when he obtained the  
17 assignment. It's February 17th, 2023. You can read  
18 it for yourself. It's Exhibit 1.

19 MS. HOOD: So I appreciate that, Mr. Ballases.  
20 I'm trying to get your client's testimony on these  
21 issues, not what's in a document that you wrote. I  
22 want his testimony, but I appreciate it. He said he  
23 couldn't recall, and that's fine with me.

24 Q. (BY MS. HOOD) On this judgment that you  
25 purchased from Hoover Slovacek, prior -- prior --

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1 sorry; my mouth is not working -- prior to your

2 purchase of the assignment, did you review the

3 underlying pleadings related to the lawsuit?

4 A. Not really.

5 Q. Can you be more specific than "not really"?

6 Is that you didn't look at them at all, or you kind of

7 looked at them?

8 A. I may have briefly skimmed through them.

9 Q. And by skimming through them, were you aware

10 that there were no causes of action for fraudulent

11 transfer, et cetera, against Jetall?

12 A. No, I wasn't, but I'll take your word for it

13 that there were not.

14 Q. And would you agree with me that the judgment

15 debtor in Judgment Number 3 is Jetall Companies, Inc.?

16 A. Yes.

17 Q. And the judgment debtor is not Arabella PH

18 3201; correct?

19 A. No, they're an alter ego of Jetall Companies.

20 MS. HOOD: Objection. Non-responsive.

21 Q. (BY MS. HOOD) Arabella PH 3201 is not a

22 judgment debtor; correct?

23 MR. BALLASES: Objection. Form.

24 A. That's correct.

25 Q. (BY MS. HOOD) 9201 Memorial Drive is not a

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1 judgment creditor; correct?

2 A. Correct.

3 MR. BALLASES: Objection. Form.

4 Q. (BY MS. HOOD) 2727 Kirby 26L, LLC, is not a

5 judgment debtor; correct?

6 MR. BALLASES: Objection. Form.

7 A. Correct.

8 Q. (BY MS. HOOD) Texas REIT, LLC, is not a

9 judgment debtor; correct?

10 A. Correct.

11 MR. BALLASES: Objection. Form.

12 Q. (BY MS. HOOD) Dalio Holdings I is not a

13 judgment debtor; correct?

14 A. Correct.

15 MR. BALLASES: Objection. Form.

16 Q. (BY MS. HOOD) Dalio Holdings II is not a

17 judgment debtor; correct?

18 A. Correct.

19 MR. BALLASES: Objection. Form.

20 Q. (BY MS. HOOD) Houston Real Estate Properties,

21 LLC, is not a judgment debtor; correct?

22 A. (Unintelligible)

23 MR. BALLASES: Objection. Form.

24 THE REPORTER: Sorry. Was that "correct"?

25 Q. (BY MS. HOOD) What was your -- yeah, I didn't



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1 hear your --

2 A. That's correct.

3 Q. -- answer either. Yeah.

4 A. Correct. Correct.

5 MR. BALLASES: And I object to the form.

6 Q. (BY MS. HOOD) Shahnaz Choudhri is not a  
7 judgment debtor; correct?

8 A. Correct.

9 MR. BALLASES: Objection. Form.

10 Q. (BY MS. HOOD) Ali Choudhri is not a judgment  
11 debtor; correct?

12 A. Correct.

13 MR. BALLASES: Objection. Form.

14 Q. (BY MS. HOOD) Shepherd-Huldy Development I is  
15 not a judgment debtor; correct?

16 A. Correct.

17 MR. BALLASES: Objection. Form.

18 Q. (BY MS. HOOD) Shepherd-Huldy Development II  
19 is not a judgment debtor; correct?

20 A. Correct.

21 MR. BALLASES: Objection. Form.

22 Q. (BY MS. HOOD) Galleria Loop Note Holder, LLC,  
23 is not a judgment debtor; correct?

24 A. Correct.

25 MR. BALLASES: Objection. Form.

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1 Q. (BY MS. HOOD) What due diligence did you do,  
2 if any, before you alleged in this adversary action,  
3 which forms the basis of your proof of claim, that my  
4 client, Dalio Holdings, LLC, is the alter ego of  
5 Houston Real Estate Properties?

6 A. What due diligence did I do personally?

7 Q. Yeah.

8 A. I mean, I think it's stated pretty clearly in  
9 the petition what evidence we have. There's a whole  
10 court history of fraudulent transfers, commingling of  
11 assets; you know, fraudulent, unethical conduct that  
12 we have available as public record as to Mr. Choudhri  
13 and, by extension, your client's conduct. And that's  
14 the due diligence I did to make these claims.

15 Q. Okay. So you based your due diligence off  
16 your allegation that this is all public record.

17 A. That's correct.

18 MR. BALLASES: Objection. Form.

19 Q. (BY MS. HOOD) What public records did you  
20 look at?

21 A. Well, if you -- everything that's stated in  
22 the petition. If you look at Lawsuit 2013-41273,  
23 Harris County District Court, he was found to have  
24 committed fraud, filed a fraudulent lien, and there  
25 was no promissory note, and that was an entity that he

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1 controlled, HREP. If you look at -- on February 16th,  
2 2017, in Case Number 2017-1 --

3 Q. Let's go -- let's go back to the first one.

4 You --

5 MR. BALLASES: I'm going to --

6 Q. (BY MS. HOOD) -- said that there was a --

7 THE REPORTER: I'm sorry.

8 Q. (BY MS. HOOD) You claim to have a finding --  
9 (Crosstalk)

10 Q. (BY MS. HOOD) You claim there's a finding of  
11 fraud --

12 MR. BALLASES: Ms. Hood --

13 THE REPORTER: Sorry --

14 MR. BALLASES: -- can you let my client answer  
15 the question, please?

16 MS. HOOD: I -- it's my question-and-answer,  
17 and if I want to cut him off, I can.

18 MR. BALLASES: Okay. So you want to --

19 MS. HOOD: I want to -- I want to drill down  
20 on the first one. Well, he's referencing a pleading  
21 that I'm assuming that you wrote, so I just want to  
22 find out what he knows personally about some of this  
23 stuff.

24 MR. BALLASES: Objection (unintelligible).

25 Q. (BY MS. HOOD) So you reference a lawsuit --

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1 hang on. Let me find it.

2 Is that the lawsuit involving HREP?

3 A. Yes.

4 Q. Okay. And were you involved in that lawsuit?

5 A. I was not.

6 Q. So everything you know about that lawsuit, you  
7 read as a matter of public record.

8 A. That's correct.

9 Q. Was there a finding of fraudulent transfers in  
10 that case?

11 MR. BALLASES: Objection. Form.

12 A. Other fraud, but I don't know if fraudulent  
13 transfer was part of that.

14 Q. (BY MS. HOOD) I didn't see it.

15 MR. BALLASES: Objection. Sidebar.

16 Q. (BY MS. HOOD) All right. That's the first  
17 lawsuit that you said you looked at for public record  
18 in order to determine that my client is somehow the  
19 alter ego of all these other things; correct?

20 A. That's correct.

21 Q. Okay. What other -- what other public records  
22 did you review?

23 A. There's also these videos by a guy named Wayne  
24 Dolcefino I saw.

25 Q. So you looked at videos.

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1 A. Yes.

2 Q. Anything else you reviewed?

3 A. I think just generally people in the community  
4 know that your client commits fraud. He's known as a  
5 fraudster.

6 Q. Who are these --

7 A. So many people have approached me.

8 Q. Okay. Who are these people?

9 A. Yeah, I can't -- many people that he's  
10 defrauded over the years.

11 Q. Name one.

12 A. Well, Judge Norman is one. I don't know if  
13 you know him. He's in the Southern District.

14 Q. Okay. Who else?

15 A. Let's see. Who else in the community have  
16 called him a fraudster?

17 Judge Landrum, Judge Michael Landrum in the  
18 Harris County District Court, 164th District Court.  
19 He considers your client a fraud.

20 Q. And is that in relation to the HREP case?

21 A. I just think generally.

22 Q. Okay. So Judge Landrum has spoken to you  
23 about Mr. Choudhri being a fraudster?

24 A. It's in a final judgment. I can read that for  
25 you if you'd like.

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1 Q. No, I'm asking --

2 A. Do you want me to read it to you?

3 Q. No, no, no. I'm asking you. You said people

4 have told you; many people have told you. So I'm

5 asking who --

6 A. Yes.

7 Q. -- who's had a conversation with you about

8 Mr. Choudhri being a fraudster? And you've said Judge

9 Norman, and I'm assuming you didn't --

10 A. Yes.

11 Q. -- talk personally with Judge Norman. That's

12 out of an opinion; right?

13 A. Yes.

14 Q. Okay. The same as --

15 A. Members of the community --

16 Q. Okay. So who --

17 A. I'm sorry --

18 THE REPORTER: Sorry. One at a time, please.

19 Thank you.

20 Q. (BY MS. HOOD) What community?

21 MR. BALLASES: Objection. Form.

22 A. The real estate community, the Pakistani

23 community, basically anyone Mr. Choudhri has come in

24 contact with and done business with, people from those

25 communities.

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1 Q. (BY MS. HOOD) Okay. So we've got the real  
2 estate community. We've got the Pakistani community.

3 A. His family members. His own family members  
4 have said the same.

5 Q. Family members.

6 All right. So who in the real estate  
7 community have you had a specific conversation with  
8 that have informed you that he's -- that he -- that my  
9 client fraudulently -- my client, Dalio, is -- has  
10 been the recipient or the instigator of fraudulent  
11 transfers such that they're the alter ego of  
12 Mr. Choudhri?

13 A. Harold Polk.

14 Q. Who?

15 A. So just a -- Harold Polk.

16 Q. And who is Mr. Polk?

17 A. Somebody that your client knows that he ripped  
18 off, I guess.

19 Q. Well, how do you know him?

20 A. He came to me and told me that your client  
21 ripped him off.

22 Q. Okay. He came to you just out of the blue?

23 A. Yeah. I mean, you know, I don't know why he  
24 came to me, but yeah, he did.

25 Q. When did you have this --

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1 A. He probably saw the --

2 Q. When did you have this conversation with  
3 Mr. Polk?

4 A. Years ago.

5 MR. BALLASES: Objection. Form.

6 A. I can't remember.

7 Q. (BY MS. HOOD) Years ago? Okay.

8 A. Yes.

9 Q. Okay. Who else?

10 MR. BALLASES: Objection. Form.

11 A. I don't -- I can't recall. I mean, a lot of  
12 people. A lot of people.

13 MR. BALLASES: I'm going to object to the  
14 question as exceeding the scope of the judge's  
15 limiting order.

16 Can we please just stick to the basis for the  
17 proof of claim and why we are willing to withdraw it?

18 MS. HOOD: Objection. Sidebar.

19 I've asked him, what due diligence did he do  
20 in order to craft together the adversary proceeding,  
21 which was attached to the proof of claim as evidence  
22 supporting his proof of claim. And I've got, so far,  
23 two public lawsuits and some people in the community  
24 that have spoken to him, one of whose name is Harold  
25 Polk. And he can't remember anybody else's name



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1 because there's just so many over so many years.

2 Q. (BY MS. HOOD) Is that correct?

3 MR. BALLASES: No, he's identified several  
4 people.

5 I'm going to object to sidebar.

6 If you want to engage in discovery in the  
7 Southern District, we can do that, but right now we're  
8 just trying to understand why we filed the proof of  
9 claim and why we're willing to withdraw it.

10 MS. HOOD: Yeah, I understand.

11 And I object to your sidebar.

12 Q. (BY MS. HOOD) Mr. Khawaja, certainly your  
13 lawyer and Mr. Abdullatif had your permission to file  
14 this proof of claim; correct?

15 MR. BALLASES: Objection. Form.

16 A. Yes.

17 Q. (BY MS. HOOD) And you understand the proof of  
18 claim was filed under penalty of perjury.

19 A. Yes.

20 MR. BALLASES: Objection. Form.

21 Q. (BY MS. HOOD) And you understand that the  
22 amount in the proof of claim is based upon these three  
23 judgments; correct?

24 A. Yes.

25 Q. And we've run through the three judgments, and

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1 one of which you don't even have an interest in;

2 correct?

3 A. Yes, that's correct.

4 Q. And you don't know anything about the

5 substance of that judgment; correct?

6 A. That's (unintelligible).

7 MR. BALLASES: Objection. Form.

8 MS. HOOD: Excuse me. What was the answer?

9 A. That was correct.

10 Q. (BY MS. HOOD) Do you own an assigned interest

11 in any other judgment related to any of these entities

12 that you claim are alter egos of Mr. Choudhri?

13 A. I don't think so.

14 MR. BALLASES: I object to the form of the

15 question.

16 Q. (BY MS. HOOD) Is it your habit to -- strike

17 that.

18 If one of these judgments became available to

19 purchase, would you buy it?

20 MR. BALLASES: Objection. Form.

21 A. I don't know. I don't know how much money

22 your client has. It just depends. Collectibility

23 matters, so...

24 Q. (BY MS. HOOD) Collectibility matters?

25 A. Yes.

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1 Q. Did collectibility matter to you when you  
2 purchased the assignment of the judgments that form  
3 the basis of your proof of claim?

4 A. Yes.

5 MR. BALLASES: Objection. Form.

6 Q. (BY MS. HOOD) Did you do any due diligence  
7 prior to filing your proof of claim in this lawsuit as  
8 to the debtor's ability to pay these judgments?

9 A. Yes.

10 MR. BALLASES: Objection. Form.

11 Q. (BY MS. HOOD) What due diligence did you do?

12 A. Reviewed public documents, spoke to people,  
13 watched videos of Wayne Dolcefino online.

14 Q. Okay. So the public documents that you  
15 reviewed prior to filing your proof of claim in this  
16 lawsuit --

17 A. Yes.

18 Q. -- that -- let me finish -- that supported  
19 your proof of claim regarding collectibility were  
20 public records and the --

21 A. Yes.

22 Q. -- Dolcefino videos.

23 A. That's correct.

24 MR. BALLASES: Objection. Form.

25 Q. (BY MS. HOOD) When did you learn that your

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1 proof of claim was uncollectible?

2 MR. BALLASES: Objection. Form.

3 A. I think the Texas REIT judge in that case said  
4 that there wasn't enough money in the Texas REIT  
5 matter to pay us.

6 Q. (BY MS. HOOD) When you filed your proof of  
7 claim, how much money was in Texas REIT?

8 MR. BALLASES: Objection. Form.

9 A. I'm not sure. No idea.

10 Q. (BY MS. HOOD) If I understand correctly,  
11 bankrupt debtors have to file documents that outline  
12 their assets; correct?

13 A. Yes.

14 MR. BALLASES: Objection. Form.

15 Q. (BY MS. HOOD) Did you look at any of those  
16 filings by the debtor?

17 A. I believe I did, but a lot of what your client  
18 files is fraudulent, so -- or the debtor in this case.  
19 So it's hard to trust those documents.

20 MS. HOOD: Objection. Non-responsive.

21 Q. (BY MS. HOOD) Did you look at any of the  
22 documents filed by the debtor, the accounting  
23 documents, prior to filing your proof of claim?

24 MR. BALLASES: Objection. Form.

25 A. Yes.

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1 Q. (BY MS. HOOD) Which documents did you look  
2 at?

3 A. I'm sure I reviewed the schedules. I don't --  
4 I can't recall specifically what I looked at.

5 MR. BALLASES: I'm going to go ahead on this  
6 line of questioning and instruct him not to answer  
7 because it gets into attorney work product.

8 MS. HOOD: I'm just asking what he looked at.  
9 I don't want to know what you looked at or what you  
10 talked to him about.

11 MR. BALLASES: I understand.

12 MR. CHOUDHRI: I'm gonna object.

13 Mr. Ballases, you continue to coach the  
14 witness, so I'm gonna object. Please stop coaching  
15 the witness.

16 MR. BALLASES: What's your legal basis, sir,  
17 for your objection?

18 MR. CHOUDHRI: Mr. Ballases, because you're  
19 making sidebar, coaching the witness. Keep your  
20 objections limited. Don't coach the witness. You've  
21 been doing it throughout the whole depo, and you're  
22 also objecting on a frivolous basis. But regardless,  
23 please stop coaching the witness.

24 MR. BALLASES: Okay. So what's your formal  
25 objection for the record?

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1 MR. CHOUDHRI: For the record, you're  
2 improperly coaching the witness. Refrain your  
3 objections --

4 MR. BALLASES: Okay.

5 MR. CHOUDHRI: -- to just objections.

6 MR. BALLASES: I want to make sure. Okay. I  
7 just want to make sure your formal objection was on  
8 the record.

9 THE WITNESS: He's just buying time for his  
10 lawyer to make up questions.

11 MS. HOOD: What? Mr. --

12 MR. CHOUDHRI: Mr. Khawaja, what did you say?

13 MS. HOOD: Yeah. Excuse me, Mr. Choudhri.  
14 This is my time.

15 Q. (BY MS. HOOD) First of all, there's no  
16 requirement that I pepper you incessantly directly.  
17 I'm going through my notes. I don't need time to come  
18 up with questions for you.

19 I'd actually like it if you would answer my  
20 questions, but you've chosen not to do that. So I'm  
21 going through my notes to see if I can actually ask  
22 some questions that you would be kind enough to answer  
23 relating to your proof of claim and why you filed it.  
24 So when you --

25 MR. BALLASES: (Unintelligible) and what

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1 you're doing, okay, or your sidebar. And we are  
2 answering questions. I'm sorry you don't like them.

3 MS. HOOD: You're not answering them. You're  
4 objecting.

5 Q. (BY MS. HOOD) At the time that you filed your  
6 proof of claim, you had satisfied yourself that you'd  
7 be able to collect your judgments through this debtor.

8 A. Yes.

9 MR. BALLASES: Objection. Form.

10 Q. (BY MS. HOOD) Do you understand that in order  
11 to collect your judgments through this debtor, you  
12 would have to win on your adversary claim regarding  
13 the alter egos?

14 A. Yes.

15 Q. And if I read your adversary complaint, it's  
16 your assertion that Mr. Choudhri keeps his entities  
17 devoid of assets in order to keep creditors from  
18 collecting their judgments. Is that a fair statement?

19 A. I mean, I think that's one of many tactics  
20 that he uses, but yes.

21 Q. And certainly you have these judgments at your  
22 ready; correct?

23 MR. BALLASES: Objection. Form.

24 A. Yeah. I'm sorry. I didn't -- I didn't quite  
25 understand the question.

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1 Q. (BY MS. HOOD) Yeah, bad question.

2 You have these judgments that you own that you  
3 could go out and try to collect absent filing  
4 documents in Bankruptcy Court; correct?

5 A. I guess.

6 Q. And you've not chosen to pursue any  
7 post-judgment collection of these judgments in Texas  
8 State Court; correct?

9 MR. BALLASES: Objection. Form.

10 I'm going to instruct the client not to  
11 answer.

12 You're invading attorney-client, work  
13 privilege -- attorney-client, and you're also getting  
14 into joint litigation privilege. We're not going to  
15 help Mr. Choudhri hide more assets.

16 A. On advice of counsel, I will not answer that  
17 question.

18 Q. (BY MS. HOOD) It's not -- okay. The question  
19 is this. Okay? Based upon public records, I find no  
20 activity by you to collect these judgments in Texas  
21 State Courts; is that an accurate statement?

22 A. Yes.

23 MR. BALLASES: I object to the form.

24 Q. (BY MS. HOOD) And rather than pursue  
25 opportunities in State Court, you and your co-owners



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1 have chosen to pursue unrelated third parties in

2 Bankruptcy Court; correct?

3 MR. BALLASES: Objection. Form.

4 A. No, that's not correct. "Unrelated"? What do

5 you mean "unrelated"? What is that supposed to mean?

6 Q. (BY MS. HOOD) Texas (sic) Real Estate

7 Properties, LLC, is not a judgment debtor; correct?

8 You've already admitted this.

9 A. Does that mean -- you said "unrelated."

10 That's not -- they're very related.

11 Q. In your mind, but they don't -- they're not a

12 party to the judgment; correct?

13 MR. BALLASES: Objection. Sidebar.

14 A. In reality and on public record.

15 Q. (BY MS. HOOD) The debtor in this case is not

16 a judgment debtor; correct?

17 A. Asked and answered.

18 Q. Okay. Now you're objecting to your own

19 questions? Are you a lawyer or a witness?

20 A. I am a lawyer, but I mean --

21 Q. Okay. Answer my question.

22 A. -- just answering --

23 Q. Answer my question.

24 A. No, I'm not gonna answer that question.

25 Q. This debtor is not a judgment debtor to you;

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1 correct?

2 THE WITNESS: Do you want me to answer?

3 MR. BALLASES: Objection. Form.

4 You can answer.

5 A. No.

6 Q. (BY MS. HOOD) And yet you chose to pursue

7 this debtor to try to collect your judgments that are

8 in the name of others; correct?

9 A. This -- yes. This debtor is an alter ego of  
10 all the other debtor -- all the other defendants in  
11 this case.

12 Q. Tell me where there's a finding by a court of  
13 law that this debtor is the alter ego of one of the  
14 two entities in which you hold an assigned interest.

15 A. We will prove it in this case.

16 Q. Okay. That's not my question. Tell me where  
17 I can find as a matter of law that Ali Choudhri and  
18 Houston Real Estate Properties, LLC, are one and the  
19 same.

20 MR. BALLASES: Objection. Form.

21 A. We don't have that.

22 Q. (BY MS. HOOD) Tell me where I can find as a  
23 matter of public record that Jetall is one and the  
24 same with this debtor.

25 MR. BALLASES: Objection --

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1 A. Based on his testimony in multiple cases.

2 MR. BALLASES: Objection. Form.

3 Q. (BY MS. HOOD) Tell me where I can find as a  
4 matter of public record a finding by a trier of fact  
5 that Jetall Companies is one and the same as this  
6 debtor.

7 MR. BALLASES: Objection. Form.

8 A. I don't -- I'm not sure if we'll find that.

9 Q. (BY MS. HOOD) There isn't one, is there?

10 MR. BALLASES: Objection. Form.

11 A. We have multiple public record documents  
12 indicating that Ali Choudhri is one and the same as  
13 all of his entities.

14 Q. (BY MS. HOOD) And there's not a finding by a  
15 trier of fact that this debtor is one and the same  
16 with Jetall Companies, is there?

17 A. Only admissions by your client. That's it.

18 MR. BALLASES: Objection. Form.

19 Q. (BY MS. HOOD) There's no finding by a trier  
20 of fact that this debtor is one and the same as Jetall  
21 Companies; correct?

22 MR. BALLASES: Objection. Form.

23 (Phone ringing.)

24 A. (Unintelligible)

25 THE REPORTER: I'm sorry. I'm sorry. I

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1 did -- sorry. I did not hear your answer. Could you  
2 please restate your answer?

3 A. I said -- I said, Correct, not by a trier of  
4 fact, but by admissions through your client.

5 MS. HOOD: Objection. After "correct" --  
6 objection. Non-responsive after "correct."

7 Mr. Khawaja, I fully expect to go back to the  
8 Court and try to get him to compel you to answer some  
9 of my questions that I think were improperly objected  
10 to, and so I can go through that with your lawyer  
11 through motion practice. I appreciate your time  
12 today. Based upon whether or not the other lawyers  
13 and Mr. Choudhri have questions, I may or may not get  
14 another pass at you, and I appreciate your time.

15 THE WITNESS: Thank you.

16 MS. HOOD: I'm going to pass the witness to  
17 the next creditor in line, and I reserve my right to  
18 come back and ask questions -- follow-up questions if  
19 I deem necessary.

20 THE REPORTER: Sorry. Just before we go to  
21 Mr. Choudhri, would it be possible to just take two  
22 minutes to go to the bathroom?

23 MS. HOOD: Oh, absolutely. You're in charge.  
24 You're the one doing the hard work.

25 THE REPORTER: Thank you. Just two minutes.

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1 Thanks.

2 MR. CHOUDHRI: Absolutely, Cheryl. Take your  
3 time.

4 THE REPORTER: Thank you.

5 (A recess was taken.)

6 BY MR. CHOUDHRI:

7 Q. Mr. Khawaja, good afternoon. How are you?

8 A. I'm good, man. Just -- let's get to your  
9 questions. I don't -- we don't have time for  
10 formalities. Thank you.

11 Q. Mr. Khawaja, you're not looking at -- first of  
12 all, who is present with you in the room there?

13 MR. BALLASES: We've already answered that.

14 Objection. Form.

15 We're also having trouble hearing you, so you  
16 might want to turn up your volume --

17 A. Yeah, you need to turn your speaker up.

18 Q. (BY MR. CHOUDHRI) Mr. Khawaja, can you hear  
19 me now?

20 A. Better, but you still need to speak up a  
21 little bit.

22 Q. So can you identify who's in the room there  
23 with you, Mr. Khawaja?

24 MR. BALLASES: Objection. Form.

25 A. Mr. Quinlan is here; my attorney, Michael

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1 Ballases.

2 Q. Is Osama Abdullatif in the room with you?

3 A. He has --

4 MR. BALLASES: Objection. Form.

5 A. He's not in the room, like, at this minute.

6 Q. (BY MR. CHOUDHRI) But throughout this  
7 deposition, you've had Osama Abdullatif and John  
8 Quinlan sitting in the room with you, present;  
9 correct?

10 A. Yes.

11 MR. BALLASES: Objection. Form.

12 We've already answered that and said that.

13 Quit wasting everybody's time.

14 MR. CHOUDHRI: Mr. Ballases, I would ask you  
15 to please calm down and allow me to ask my questions.

16 MR. BALLASES: Objection. Sidebar.

17 Q. (BY MR. CHOUDHRI) Mr. Khawaja, you had -- as  
18 we started this deposition, you had said that I had  
19 defrauded you?

20 A. Ali, I'm sorry. You're really going to have  
21 to turn up your sound because I can't hear you and  
22 neither can the people in the room.

23 MR. CHOUDHRI: Is everybody -- can everybody  
24 hear me okay?

25 Cheryl, can you hear me?

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1 THE REPORTER: I can hear you.

2 MR. CHOUDHRI: Okay. Maybe it's only

3 Mr. Khawaja who can't hear me, then.

4 THE WITNESS: Osama, can you hear him?

5 MR. BALLASES: It's difficult to hear you.

6 MR. ABDULLATIF: No, I can't hear him without  
7 hearing aid.

8 A. Mr. Quinlan can't hear you and neither can  
9 Osama, and they need to hear you.

10 Q. (BY MR. CHOUDHRI) Well, the court reporter  
11 can hear me. If they want me to come closer, they  
12 can. I would actually object to them even being there  
13 and handing you notes, but we'll try to --

14 MR. BALLASES: Objection. Sidebar.

15 MR. CHOUDHRI: -- get on with the deposition.

16 MR. BALLASES: (Unintelligible)

17 MR. CHOUDHRI: The court reporter could hear  
18 me just fine.

19 THE WITNESS: Okay.

20 Q. (BY MR. CHOUDHRI) Mr. Khawaja, how do you  
21 know John Quinlan?

22 MR. BALLASES: Objection. Form.

23 A. I'm not gonna answer that question.

24 Q. (BY MR. CHOUDHRI) You're not gonna answer the  
25 question of how you know John Quinlan?

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1 A. I -- I met him in the real estate community.

2 Q. When did you meet Mr. Quinlan?

3 MR. BALLASES: Objection.

4 Ali, can you show yourself? If you're going  
5 to be asking questions, you need to show yourself.

6 THE WITNESS: Yes.

7 MR. BALLASES: Thank you.

8 MR. CHOUDHRI: Okay. Can you all see me now?  
9 Is that okay?

10 MR. BALLASES: Yes.

11 Q. (BY MR. CHOUDHRI) Okay. Mr. Khawaja, you  
12 were present earlier during the deposition when you  
13 were being asked questions. Did you happen to listen  
14 to Judge Robinson's oral ruling?

15 MR. BALLASES: Objection. Form.

16 A. I don't know what that has to do with  
17 anything.

18 Q. (BY MR. CHOUDHRI) The deposition that we're  
19 here on, Mr. Khawaja, is --

20 A. Yes.

21 Q. -- subject to a court order. Do you  
22 understand that?

23 MR. BALLASES: Objection. Form.

24 This has nothing to do with the proof of  
25 claim. Move on.



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1 A. Please get to the proof of claim,  
2 Mr. Choudhri.

3 Q. (BY MR. CHOUDHRI) Mr. Khawaja, this is my  
4 deposition. I get to ask you questions, and you can  
5 answer them. This is my opportunity.

6 MR. CHOUDHRI: And so, again, Court Reporter,  
7 would you please repeat the question?

8 THE REPORTER: The question is (Reading:) The  
9 deposition that we're here on, Mr. Khawaja, is subject  
10 to a court order. Do you understand that?

11 A. I didn't -- I have not seen a court order.

12 Q. (BY MR. CHOUDHRI) Are you aware, earlier  
13 today, that an oral ruling on an audio from the Court  
14 was sent to your attorney, Michael Ballases?

15 A. It -- it may have been.

16 MR. BALLASES: Objection. Form.

17 Q. (BY MR. CHOUDHRI) And are you aware, whether  
18 written or oral, we are here pursuant to a court  
19 order? Are you aware of that?

20 MR. BALLASES: Objection. Form.

21 A. Might -- that might be the case.

22 Q. (BY MR. CHOUDHRI) But you're not aware that  
23 we're here pursuant to a court order.

24 MR. BALLASES: Objection. Form.

25 A. It could possibly be the case.

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1 Q. (BY MR. CHOUDHRI) But you don't know?

2 A. I don't know.

3 Q. And I've asked you earlier as how you know  
4 Mr. Quinlan, and your answer was you're not going to  
5 answer that; is that correct?

6 MR. BALLASES: Objection. Form.

7 A. I think I told you after -- after that that I  
8 met him in the real estate community.

9 Q. (BY MR. CHOUDHRI) And when did you meet him?

10 MR. BALLASES: Objection. Form.

11 Are you going to ask every question two or  
12 three times? Ask good questions.

13 MR. CHOUDHRI: Mr. --

14 A. I can't remember.

15 MR. CHOUDHRI: Mr. Ballases -- Mr. Ballases,  
16 for the record, I would ask you to please stop  
17 interfering and obstructing the deposition.

18 MR. BALLASES: Objection. Sidebar.

19 So I would just request that you comply with  
20 the judge's instruction to tailor the questions  
21 narrowly to the reasons why the proof of claim was  
22 filed and why it was withdrawn and not ask why he  
23 knows people and who he knows people and not ask  
24 things three times.

25 Q. (BY MR. CHOUDHRI) Is John Quinlan a

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1 co-claimant on the proof of claim?

2 A. I believe so.

3 MR. BALLASES: Objection. Form.

4 Q. (BY MR. CHOUDHRI) Is Osama Abdullatif a  
5 co-claimant on the proof of claim?

6 MR. BALLASES: Objection. Form.

7 A. I believe so, yes.

8 Q. (BY MR. CHOUDHRI) When did you meet Osama  
9 Abdullatif?

10 MR. BALLASES: Objection. Form.

11 A. Maybe 2010. 2009 or '10, something like that.  
12 I'm not sure. Around the time you deprived me of my  
13 property, I think.

14 Q. Which property is that, Mr. Khawaja?

15 A. The Avondale property.

16 MR. BALLASES: Objection. Form.

17 Q. (BY MR. CHOUDHRI) Can you tell us a little  
18 bit about that, because you've mentioned it several  
19 times in this deposition, and so I'd like you to tell  
20 us a little more about the Avondale property.

21 A. No --

22 MR. BALLASES: Objection. Form.

23 I'm going to instruct him not to answer  
24 because you're violating the judge's instruction as to  
25 this limited deposition.

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1 Please stick to the proof of claim and the  
2 reason why it's being withdrawn.

3 MR. CHOUDHRI: Mr. Ballases, he's opening the  
4 door. He's answering my questions. I have a right to  
5 ask him questions. Okay?

6 MR. BALLASES: Yeah, so you're not a lawyer.  
7 You don't know what you're talking about.

8 MR. CHOUDHRI: Mr. Ballases, please be  
9 respectful, sir. I know it's difficult, but please be  
10 respectful.

11 Q. (BY MR. CHOUDHRI) Mr. Khawaja --

12 MR. BALLASES: I am.

13 Q. (BY MR. CHOUDHRI) -- are you going to answer  
14 my --

15 MR. BALLASES: I'm respecting my client --

16 Q. (BY MR. CHOUDHRI) -- questions --

17 MR. CHOUDHRI: Mr. Ballases, please stop  
18 disrupting the deposition.

19 Q. (BY MR. CHOUDHRI) Mr. Khawaja, you said you  
20 met Mr. Osama Abdullatif when I deprived you of your  
21 property. Is that -- did I hear that correct?

22 MR. BALLASES: Objection. Form.

23 A. Yes.

24 MR. BALLASES: I'm going to instruct you not  
25 to answer.

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1 We're not going to talk about this.

2 THE WITNESS: Okay. Sorry.

3 MR. BALLASES: It has nothing to do with the  
4 proof of claim. It has nothing to do for the reason  
5 for filing it. It has nothing --

6 A. Ali, we can grab a cup of coffee afterwards.  
7 You can ask me all about that. Let's please stick to  
8 the purpose of this. Okay?

9 MR. CHOUDHRI: Let's have some decorum,  
10 gentlemen. This is a formal deposition. I'm asking  
11 the questions. Mr. Khawaja just said yes, so why the  
12 proof of claim was filed is very relevant. And  
13 Mr. Khawaja just answered that, so I have an  
14 opportunity to explore that.

15 Mr. Ballases, you have a law license. You  
16 have to follow the creed that you've been licensed by,  
17 so please don't frivolously object and coach the  
18 witness. Okay? I --

19 MR. BALLASES: Objection. Sidebar.

20 MR. CHOUDHRI: -- would like -- if everybody  
21 wants, I'm happy to play the audio of the judge's oral  
22 ruling so Mr. Khawaja is aware -- and so are you,  
23 Mr. Ballases -- and we don't have to waste more time  
24 like we did this morning about what the scope of the  
25 deposition is about. Would you like me to do that,

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1 Mr. Ballases, so you can stop --

2 MR. BALLASES: Objection. Sidebar --

3 MR. CHOUDHRI: -- interfering --

4 MR. BALLASES: The only reason you're asking  
5 questions is because I heard it. So why don't you be  
6 quiet and focus on asking questions if it's relevant  
7 to the judge's scope. Thank you.

8 MR. CHOUDHRI: Madam Court Reporter, do you  
9 have a -- do you have an ability to play at a certain  
10 point of the audio? Is that something you're able to  
11 do for us?

12 THE REPORTER: I am actually not authorized to  
13 be playing audio or sharing exhibits during the  
14 deposition.

15 MR. CHOUDHRI: Okay. Well, maybe we can then  
16 play the audio at 23 minutes and 14 seconds, and then  
17 we'll play it at 28 minutes and 12 seconds.

18 Q. (BY MR. CHOUDHRI) Mr. Khawaja, you -- you  
19 have indicated that you have not heard the oral  
20 ruling, why we're here, by Judge Robinson; is that  
21 correct?

22 A. Let's assume for purposes of this question I  
23 have. What would you like me to answer?

24 Q. Well, I just want to clarify because you keep  
25 not answering, and Mr. Ballases keeps interfering and

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1 interrupting, so I want to go ahead and get the  
2 judge's ruling on the record, so --

3 A. Just ask me the questions that you want the  
4 answers to. I'm happy to answer the questions.

5 Q. Were you present or on the phone when the  
6 hearing took place with Judge Robinson?

7 A. I was not.

8 MR. BALLASES: Objection. Form.

9 MR. CHOUDHRI: Let's go ahead and play at  
10 23 minutes and 14 seconds.

11 Gene, can you play that right now?

12 MR. BALLASES: So just for the record, we --  
13 as I've told your counsel, we have to cut it off at  
14 4:30. If this is how you want to use your time, by  
15 all means. It's your dime.

16 MR. CHOUDHRI: Mr. Ballases, you've been  
17 interfering with the depo all day, and we're going to  
18 do this by the rules and what the rules -- the federal  
19 rules are and the timing. So if you want to walk out  
20 of a depo, that's really your choice --

21 MR. BALLASES: (Unintelligible)

22 MR. CHOUDHRI: -- and you'll suffer the  
23 consequences.

24 THE REPORTER: Okay. So just before we play  
25 the audio, as I let everybody know in the e-mail, I

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1 cannot transcribe anything I cannot clearly hear. If  
2 you would like a separate transcription of this audio,  
3 then you can contact our office.

4 MR. CHOUDHRI: No -- no problem, Cheryl.  
5 We'll do the best we can.

6 THE REPORTER: Okay. Thank you.

7 MR. CHOUDHRI: And I'm sure you will too. And  
8 if it works, great.

9 THE REPORTER: Thank you.

10 MR. CHOUDHRI: So while we're getting ready to  
11 do that -- go ahead, Gene. Are you ready?

12 MR. MCCUBBIN: Yeah. You said 23:14.

13 MR. CHOUDHRI: Correct, at 23 minutes and  
14 14 seconds. Let's start there.

15 MR. MCCUBBIN: Yeah, this is, I think, 23:10.  
16 Here we go.

17 (Audio file played.)

18 MR. MCCUBBIN: There you go.

19 MR. CHOUDHRI: Would you go to 23 minutes and  
20 18 -- 28 minutes and 12 seconds, please?

21 MR. MCCUBBIN: Yeah, give me a second.

22 MR. CHOUDHRI: 28 minutes and 12 seconds.  
23 Let's get that on the record. Go ahead.

24 MR. MCCUBBIN: Okay.

25 (Audio file played.)



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1 MR. MCCUBBIN: There you go.

2 Q. (BY MR. CHOUDHRI) Mr. Khawaja, were you able  
3 to hear the judge, Robinson?

4 A. Yes.

5 Q. Does that help you understand a little more  
6 about what we're here about?

7 A. What's your question?

8 Q. Did you --

9 MR. BALLASES: Objection (unintelligible) --

10 Q. (BY MR. CHOUDHRI) -- hear him say motivations  
11 of filing the proof of claim? Do you understand what  
12 that means, motivations of filing the proof --

13 A. Yes.

14 Q. -- of claim? Okay.

15 A. Yes.

16 Q. So again, I want to go back to some of my  
17 questions, Mr. Khawaja. You said that I defrauded you  
18 of your property.

19 A. Yes.

20 Q. So can you explain how I defrauded you of your  
21 property? I want to understand the motivations here.

22 A. I think we got a trial --

23 MR. BALLASES: Objection. Form.

24 A. -- on that case coming up in a month. Let's  
25 wait till trial. Let's wait till we get to trial on

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1 that.

2 Q. (BY MR. CHOUDHRI) Well, Mr. Khawaja, you  
3 filed this proof of claim in the Texas REIT bankruptcy  
4 case; correct?

5 A. Yes.

6 MR. BALLASES: Objection. Form.

7 Q. (BY MR. CHOUDHRI) And so your motivation,  
8 when I asked you earlier -- and we can go back and  
9 have the court reporter reread some of your answers  
10 earlier in the deposition. I've taken notes as well.  
11 I just want to make sure the record is good and clear;  
12 there's no confusion.

13 MR. BALLASES: Objection. Form.

14 Objection. Sidebar.

15 Q. (BY MR. CHOUDHRI) Mr. Khawaja, I just want to  
16 understand today; you're under no medication. Right?

17 A. Yes.

18 MR. BALLASES: Objection. Form.

19 Q. (BY MR. CHOUDHRI) And you're here and able to  
20 answer truthfully under oath?

21 A. Yes.

22 MR. BALLASES: Objection. Form.

23 A. Yes.

24 Q. (BY MR. CHOUDHRI) And you understand you're  
25 under oath as if you were in a courtroom; correct?

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1 MR. BALLASES: Objection. Form.

2 A. Like I'm in front of a jury, yes.

3 Q. (BY MR. CHOUDHRI) Or a judge.

4 A. Or a judge.

5 Q. Okay. So, Mr. Khawaja, can you tell us about  
6 when you say, You defrauded me of my property, and you  
7 said Avondale. Did I hear that correctly?

8 MR. BALLASES: Objection --

9 A. Mr. Choudhri, here's the thing --

10 MR. BALLASES: Objection. Form.

11 I'm going to instruct my client not to answer  
12 because it exceeds the scope of the deposition as to  
13 what -- the judge's order.

14 Plus, as I understand it, based on what was  
15 just said --

16 THE WITNESS: There's a trial coming.

17 MR. BALLASES: -- he got a trial coming up,  
18 and I'm not going to let you ask him -- get a second  
19 deposition of him in a wholly separate matter that's  
20 irrelevant to our proof of claim. Move along, please,  
21 sir.

22 MR. CHOUDHRI: Mr. Ballases, you have been  
23 disrupting this deposition the entire time. You  
24 refused to let me answer -- ask questions, Ms. Lori  
25 Hood. We had to send you the audio. You misstated

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1 what the judge said. You continue to disrupt the  
2 deposition. We're allowed -- I played the audio  
3 ruling. The judge says the motivation of filing the  
4 proof of claim, and he says, Because you defrauded me  
5 of my property, Avondale. So I have a right to get  
6 into that.

7 When he answers a question, Mr. Ballases, I  
8 have a right to explore that because that's his  
9 answer. He opened the door. Throughout this depo, he  
10 opened the door, Mr. Ballases, so I am entitled to ask  
11 those questions. And if you're going to continue --

12 MR. BALLASES: (Unintelligible)

13 MR. CHOUDHRI: -- to instruct him wrongfully  
14 to not answer that, then just instruct him, but stop  
15 doing what you're doing and making talking objections.  
16 Either object or instruct him not to answer, and we'll  
17 keep moving on. But keep your objections limited to  
18 what's correct and not frivolous --

19 MR. BALLASES: What's your legal objection,  
20 sir -- what's your legal objection, sir, because I  
21 didn't hear it.

22 MR. CHOUDHRI: You continue to do sidebars  
23 throughout the deposition and disrupt and frustrate  
24 the deposition. We're trying to have a smooth  
25 deposition; you continue to have sidebars. So please

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1 refrain from that, Mr. Ballases.

2 Q. (BY MR. CHOUDHRI) Mr. Khawaja, when you  
3 said --

4 MR. BALLASES: Objection. Sidebar.

5 Q. (BY MR. CHOUDHRI) -- you -- Mr. Khawaja, what  
6 is the Avondale property?

7 MR. BALLASES: Objection. Form.

8 This has nothing do to with the proof of claim  
9 or the withdrawal --

10 (Crosstalk)

11 A. We're getting ready to stop this depo -- you  
12 need to get to your questions. We're not talking  
13 about cases that are going to trial. You know better  
14 than that. I'm not doing it. So get to the questions  
15 you have about this proof of claim. I'm happy to  
16 answer those, or we're done.

17 Q. (BY MR. CHOUDHRI) Mr. Khawaja, are you going  
18 to comply with the Court's order on this --

19 A. Yes.

20 Q. -- now getting into motivations for filing the  
21 claim? And when asked, you said, Because you  
22 defrauded me of my property.

23 A. No, I didn't. That's not true. You asked  
24 me --

25 Q. That's not --

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1 A. -- when did I meet Osama -- you asked me when  
2 did I meet Osama Abdullatif, and I said, Around the  
3 time you defrauded me of my property.

4 Q. And when I -- when you said "my property,"  
5 you're defining your property as Avondale; is that  
6 correct?

7 MR. BALLASES: Objection. Form.

8 A. Yeah, I'm not going to -- again, we're getting  
9 ready to shut the depo down, so it's up to you.

10 Q. (BY MR. CHOUDHRI) So you're refusing to  
11 answer these questions; correct?

12 A. I'm refusing to answer questions that are  
13 outside the scope of what you're permitted to ask,  
14 correct.

15 MR. BALLASES: Objection. Form.

16 A. You're not an attorney.

17 Q. (BY MR. CHOUDHRI) So because I'm not an  
18 attorney, I can't ask you questions per the Court's  
19 ruling --

20 A. Outside --

21 Q. -- is your objection?

22 A. -- of the scope -- outside of the scope,  
23 you're not. That's correct.

24 Q. So are you saying motivations for filing the  
25 claim and you opening the door is outside the scope?

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1 A. Yes.

2 Q. Okay.

3 MR. BALLASES: Objection. Form.

4 Q. (BY MR. CHOUDHRI) And you're gonna refuse --  
5 you're gonna refuse to answer any of those questions;  
6 correct?

7 MR. BALLASES: Objection. Form.

8 A. You've only asked me one that I'm not gonna  
9 talk about because there's a trial coming up. I think  
10 the judge will understand that. Your -- if your --  
11 any of the attorneys that you're paying that are here  
12 with you would care to speak up, they'll tell you,  
13 Mr. Choudhri, you can't ask those questions. So you  
14 should ask them too.

15 MR. BALLASES: I object to the form of the  
16 question.

17 Q. (BY MR. CHOUDHRI) Mr. Khawaja, did you -- you  
18 mentioned Wayne Dolcefino; correct?

19 A. Yes.

20 MR. BALLASES: Objection. Form.

21 Q. (BY MR. CHOUDHRI) And, Mr. Khawaja, is  
22 somebody in the room coaching you? Because you keep  
23 looking at somebody else and talking and -- who's in  
24 front of you right now that you keep looking at and  
25 talking --

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1 A. I don't need to be coached to answer your  
2 silly questions, no.

3 MR. BALLASES: Objection. Sidebar.

4 A. I can answer them with my eyes closed. Do you  
5 want me to do that?

6 Q. (BY MR. CHOUDHRI) Mr. Khawaja, you can answer  
7 them however you want. I just want you to answer them  
8 truthfully --

9 A. Yes.

10 Q. -- and honestly.

11 A. Yes.

12 Q. When did you meet Mr. Ballases?

13 MR. BALLASES: Objection. Form.

14 A. I don't know, to be hon -- but, you know, you  
15 understand he's my attorney, and this is all --  
16 anything I discussed with him, ever, including when I  
17 met him or where I met him, is protected by  
18 attorney-client privilege. You can't ask me those  
19 questions.

20 Q. (BY MR. CHOUDHRI) So are you going to refuse  
21 to answer my question on when you met Mr. Ballases?

22 A. Yes, I am.

23 Q. Mr. Khawaja, are you aware -- let's --

24 MR. CHOUDHRI: Steve, are you there? Would  
25 you pull up that proof of claim, Steve?



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1 MR. SATHER: Just give me just a moment. I  
2 need to turn my sharing back on.

3 MR. CHOUDHRI: No problem.

4 THE REPORTER: And just while he's doing that,  
5 Mr. Khawaja, could you spell Avondale for me, please?

6 THE WITNESS: A-V-O-N-D-A-L-E.

7 THE REPORTER: Thank you.

8 MR. SATHER: Okay. I'm there.

9 MR. CHOUDHRI: Would you go down, Mr. Sather?  
10 Just scroll down a little bit, please. Keep going.

11 Go to paragraph 9. Stop right there.

12 Q. (BY MR. CHOUDHRI) Mr. Khawaja, what does  
13 Number 9 say on the proof of claim?

14 A. 9 --

15 MR. CHOUDHRI: Time out. Time out. Before we  
16 go there, Mr. Sather, would you scroll up just for a  
17 second a little bit? Stop right there.

18 Q. (BY MR. CHOUDHRI) Mr. Khawaja, what does that  
19 captioning say? It starts at "24-10120." Would you  
20 read that, please, into the record?

21 A. 24-1010 (sic), and this is at Number 4? Oops.  
22 Sorry. One second here.

23 MR. BALLASES: Steve, would you mind -- this  
24 is Michael Ballases. Will you make it bigger? I  
25 can't read it on the screen. Please.

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1 Q. (BY MR. CHOUDHRI) Mr. Khawaja, my question is  
2 to you.

3 MR. BALLASES: Thank you.

4 MR. CHOUDHRI: Stop, please.

5 Q. (BY MR. CHOUDHRI) What does it say? Claim  
6 Number -- what exactly does that say? Would you read  
7 that -- that entire header --

8 A. (Reading:) Read the --

9 Q. -- into the record?

10 A. (Reading:) Read the instructions before  
11 filling out this form. This form is for making a --

12 Q. No --

13 A. (Reading:) -- claim for payment in a  
14 bankruptcy case --

15 Q. No.

16 A. Which one?

17 Q. No, Mr. Khawaja. No, Mr. Khawaja. Look on  
18 top where it says -- where it has a case number,  
19 starts off with a case number. And then --

20 A. Yes.

21 Q. -- that's what -- would you read what's  
22 highlighted, Mr. Khawaja, into the record?

23 A. Yeah, twenty -- okay. (Reading:)  
24 24-10120-smr, Claim Number 9-1, filed 06/04/24, Main  
25 Document page 1 of 3.

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1 Q. Yes. Is that what you authorized to be filed?

2 A. Yes.

3 MR. BALLASES: Objection. Form.

4 MR. CHOUDHRI: Scroll down, Mr. Sather.

5 Scroll down, Mr. Sather. Okay. Stop right there.

6 Q. (BY MR. CHOUDHRI) Mr. Khawaja, what does it  
7 say on paragraph 9?

8 A. (Reading:) Is all or part of the claim  
9 secured? Yes. The claim is secured by a lien on  
10 property.

11 Is that what you're referring to?

12 Q. Yes.

13 MR. CHOUDHRI: Stop right there.

14 Q. (BY MR. CHOUDHRI) So it's your contention  
15 that your claim is secured by a lien on the property;  
16 is that correct?

17 A. I believe so, if that's what we filed.

18 Q. Okay. And you understand -- at least what  
19 you're representing here is that a lis pendens is a  
20 lien on property; correct?

21 A. I'm assuming that's what we're referring to,  
22 yes.

23 Q. Okay. Mr. Khawaja, you're familiar with the  
24 property Texas REIT that --

25 A. Yes.

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1 Q. Let me strike that. Let me strike that. It's  
2 a bad question. Let me clear the record here. Okay?

3 Mr. Khawaja, you're aware that debtor, Texas  
4 REIT, LLC, is in the Western District of the  
5 Bankruptcy Court.

6 MR. BALLASES: Objection. Form.

7 A. I guess. I mean, that's -- if that's where  
8 you chose to file it. I'm not sure.

9 Q. (BY MR. CHOUDHRI) You understand --

10 A. The property's located here in Houston, Harris  
11 County.

12 Q. So my question, Mr. Khawaja, is that you are  
13 aware that Texas REIT is the debtor that's in  
14 bankruptcy in the Western District.

15 A. Yes.

16 Q. And Texas REIT owns a property. Are you  
17 familiar with the property that Texas REIT owns?

18 A. Yes.

19 Q. What do you know about the property that Texas  
20 REIT owns?

21 MR. BALLASES: Objection. Form.

22 A. That you have defrauded your partners out of  
23 money in that property, that it's -- Walgreens left.  
24 It's falling apart; a lot of homeless, a lot of crack  
25 addicts in the area now. It's not maintained

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1 properly. It's part of this case, that there's a  
2 judgment against you on it, and it's basically -- and  
3 it's in Houston, yeah. It's in Houston, Texas, too.

4 Q. Anything else that you want to add to it?

5 A. No, that's it.

6 Q. When did you become familiar with this  
7 property?

8 A. I think in the course of just monitoring  
9 litigation against you.

10 Q. And remind me what kind of lawyer you are,  
11 Mr. Khawaja.

12 MR. BALLASES: Objection. Form.

13 A. I do plaintiff's work.

14 Q. (BY MR. CHOUDHRI) Is that personal injury  
15 mainly, what your --

16 A. Yes.

17 Q. -- focus is?

18 A. Yes, correct.

19 Q. Personal injury attorney?

20 A. Yes, correct.

21 MR. BALLASES: Objection. Form.

22 Q. (BY MR. CHOUDHRI) And, Mr. Khawaja, so you  
23 became familiar with this property through the course  
24 of litigation, you said?

25 A. Yes, just monitoring litigation.

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1 Q. When did you first become familiar with this  
2 property?

3 A. I couldn't say --

4 MR. BALLASES: Objection. Form.

5 A. I couldn't say when.

6 Q. (BY MR. CHOUDHRI) Were you involved in any  
7 way, shape, or form of filing any lis pendenses (sic)  
8 on this property?

9 A. No.

10 MR. BALLASES: Objection. Form.

11 Q. (BY MR. CHOUDHRI) You've never been involved  
12 of filing any lis pendenses on this property?

13 A. You mean --

14 MR. BALLASES: Objection. Form.

15 A. You mean other than the one that's in this --  
16 or is part of the bankruptcy case?

17 Q. (BY MR. CHOUDHRI) Mr. Khawaja, my question is  
18 very simple. Are you or have you ever been involved  
19 in filing, directly or indirectly, lis pendenses  
20 against the property that the debtor owns?

21 A. Not to my -- not to my understanding, no.

22 MR. BALLASES: Objection. Form.

23 A. I'm not sure what that has to do with the  
24 scope of this deposition either, by the way.

25 Q. (BY MR. CHOUDHRI) Do you know what a

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1 bankruptcy stay is, Mr. Khawaja? Do you know what an  
2 automatic --

3 A. Yes.

4 Q. -- stay is?

5 A. Yes.

6 THE REPORTER: I'm sorry. Do you know what  
7 a --

8 MR. BALLASES: Objection. Form.

9 THE REPORTER: -- what is? I'm sorry. Mr. --

10 MR. CHOUDHRI: An automatic -- an automatic  
11 stay.

12 THE REPORTER: Okay. Thank you.

13 A. You have more experience than I do on that,  
14 but I do know what it is, yes.

15 Q. (BY MR. CHOUDHRI) Have you violated any  
16 automatic stays?

17 MR. BALLASES: Objection. Form.

18 A. No, absolutely not.

19 Q. (BY MR. CHOUDHRI) Do you believe filing --  
20 okay. Who is Hira Azhar?

21 MR. BALLASES: Objection. Form. And instruct  
22 the client not to answer --

23 THE WITNESS: (Unintelligible)

24 MR. BALLASES: -- because it has nothing to  
25 do --

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1 A. It's not --

2 MR. BALLASES: -- with our proof of claim or  
3 the withdrawal of it, and it exceeds the judge's  
4 limitations on this depo. So I'm going to object to  
5 the question as harassing and oppressive and instruct  
6 the client not to answer.

7 THE WITNESS: Thank you.

8 Q. (BY MR. CHOUDHRI) Did you participate with  
9 Hira Azhar of filing a lis pendens against the subject  
10 property?

11 MR. BALLASES: Same objection, same assertions  
12 of privilege, same assertions of -- same objections  
13 and same instruction not to answer.

14 Q. (BY MR. CHOUDHRI) You can answer,  
15 Mr. Khawaja. What's your answer?

16 A. I will not answer on advice of counsel.

17 Q. Are you aware of any lis pendenses filed by  
18 Hira Azhar against the debtor's property?

19 MR. BALLASES: Objection. Same objections,  
20 same assertions of privilege, same instruction not to  
21 answer. This has nothing to do with the proof of  
22 claim in this matter or the reason for withdrawal.

23 A. I'm not going to answer.

24 Q. (BY MR. CHOUDHRI) Mr. Khawaja, has it been  
25 your motivation to prevent me or any of my entities



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1 from transacting business?

2 MR. BALLASES: Objection. Form.

3 A. No.

4 Q. (BY MR. CHOUDHRI) Is it your -- is it your  
5 habit to contact people that me or my entities are  
6 doing business with and tell them not to do business  
7 with me?

8 A. Never --

9 MR. BALLASES: Objection. Form.

10 A. Never done that.

11 MR. BALLASES: Can we please ask questions  
12 about the purpose for the deposition today, the reason  
13 for the filing of the proof of claim and the reason  
14 for the withdrawal, sir?

15 MR. CHOUDHRI: Mr. Ballases, stop wasting  
16 time. Keep it to objections.

17 Q. (BY MR. CHOUDHRI) Mr. Khawaja, do you -- what  
18 is your phone number?

19 MR. BALLASES: Object -- don't answer that.  
20 Objection --

21 Q. (BY MR. CHOUDHRI) Your cell --

22 A. You know my number. You've called me.

23 MR. BALLASES: Objection. Stop. Stop.

24 I'm going to instruct you not to answer. Your  
25 cell phone is not relevant to this proceeding today.

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1 You don't need to give it on the record.

2 It's oppressive -- objection of oppressive and

3 harassing.

4 Q. (BY MR. CHOUDHRI) Mr. Khawaja, are you not

5 gonna answer the question about what your cell phone

6 is on the record today --

7 A. Correct.

8 Q. You refuse to answer --

9 A. Yeah, on advice of counsel --

10 THE REPORTER: I'm sorry --

11 A. On advice of counsel --

12 THE REPORTER: Just --

13 A. On advice of counsel --

14 THE REPORTER: -- one person --

15 THE WITNESS: Sorry.

16 THE REPORTER: -- at a time, please. Thank

17 you.

18 THE WITNESS: On answering the question that

19 Mr. Choudhri just asked, on advice of counsel, I will

20 not answer that question.

21 Q. (BY MR. CHOUDHRI) Isn't it true that you've

22 been involved with over 50 lis pendenses relating to

23 Texas REIT or any other entity that I have ownership

24 or control of?

25 A. No --

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1 MR. BALLASES: Objection. Form.

2 A. -- not true.

3 Q. (BY MR. CHOUDHRI) You have not participated

4 in any slander of title or fraudulent liens or

5 lis pendens on any properties that Texas REIT or I

6 own or control.

7 MR. BALLASES: Objection. Form.

8 A. Correct.

9 Q. (BY MR. CHOUDHRI) You've not participated or

10 been involved with any filing of any lis pendens

11 relating to the debtor's property.

12 A. That's correct.

13 MR. BALLASES: Objection. Form.

14 Are you referring to -- aside from the lis

15 pendens filed --

16 MR. CHOUDHRI: Sir -- no, Mr. Ballases. Stop.

17 Stop. Stop coaching the witness.

18 I'm going to object to you, your sidebar.

19 You're continually coaching the witness.

20 Please stop.

21 Q. (BY MR. CHOUDHRI) Mr. Khawaja, do you use --

22 MR. BALLASES: (Unintelligible)

23 Q. (BY MR. CHOUDHRI) -- text messaging as a form

24 of communication --

25 (Crosstalk)

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1 THE REPORTER: Sorry. I'm sorry. I'm getting  
2 two speakers again.

3 MR. BALLASES: Sure. I just -- I'm just  
4 trying to help Mr. Choudhri answer questions --

5 MR. CHOUDHRI: No, please don't help.

6 MR. BALLASES: -- on our --

7 MR. CHOUDHRI: Please don't help me. I don't  
8 need your help, Mr. Ballases. Please stop talking.

9 Object and limit your objections. Stop talking.

10 Q. (BY MR. CHOUDHRI) Mr. Khawaja, do you use  
11 text messaging as a form of communication?

12 MR. BALLASES: Objection. Form.

13 A. Occasionally, sure. I think we all do.

14 Q. (BY MR. CHOUDHRI) Have you texted Wayne  
15 Dolcefino?

16 A. No.

17 MR. BALLASES: Objection. Form.

18 Q. (BY MR. CHOUDHRI) Have you received any text  
19 messages from Wayne Dolcefino?

20 A. No.

21 MR. BALLASES: Objection. Form.

22 Q. (BY MR. CHOUDHRI) What's your answer,  
23 Mr. Khawaja?

24 A. No.

25 MR. BALLASES: Objection. Form.

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1 Q. (BY MR. CHOUDHRI) Have you ever paid Wayne  
2 Dolcefino directly or indirectly, in any way?

3 MR. BALLASES: Objection. Form.

4 A. (Unintelligible) no.

5 MR. BALLASES: I'm going to -- your answer is  
6 what?

7 THE WITNESS: My answer is no.

8 MR. BALLASES: The answer is no, but I'm going  
9 to instruct him not to answer any more questions that  
10 have nothing to do with the scope and purpose of this  
11 deposition pursuant to the judge's instruction.

12 MR. CHOUDHRI: Stop frivolously objecting,  
13 Mr. Ballases. He said he learned based on Wayne  
14 Dolcefino's videos, so I definitely have an  
15 opportunity to get into the line of questions that I  
16 need to get into, and you're going to continue to  
17 object and instruct him not to answer. Is that what  
18 you're going to say on the record?

19 MR. BALLASES: Objection. Sidebar.

20 Q. (BY MR. CHOUDHRI) Mr. Khawaja, just so the  
21 record is clear, you have not ever, in any way, shape,  
22 or form, paid Wayne Dolcefino any amount of money or  
23 consideration?

24 A. I'm not answering that question.

25 MR. BALLASES: Objection. Form.

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1 I'm going to instruct the client --

2 MR. CHOUDHRI: I --

3 MR. BALLASES: -- not to answer because it is  
4 oppressive and harassing and has nothing to do with  
5 the limited scope of the deposition, and he's already  
6 answered it.

7 Move along.

8 Q. (BY MR. CHOUDHRI) Are you not going to answer  
9 any questions relating to Wayne Dolcefino?

10 A. That means, yes, I'm not going to answer any  
11 questions relating to Wayne Dolcefino. He has nothing  
12 to do with this case at all.

13 Q. Well, can I ask you why? When Ms. Hood was  
14 asking you, you mentioned that you -- you mentioned  
15 Wayne Dolcefino and how you --

16 A. He --

17 MR. BALLASES: Objection. Form.  
18 (Crosstalk)

19 THE REPORTER: I'm sorry. One at a time,  
20 please.

21 THE WITNESS: I'm sorry. Go ahead.

22 MR. BALLASES: Objection. Form, for the  
23 record.

24 A. Well, can I answer? You asked very -- she  
25 asked me very specifically where did I learn about the

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1 potential for the claims that -- the basis of the  
2 claims that we filed against you in this case, and I  
3 answered, Through multiple sources, including Wayne  
4 Dolcefino. That's a factual answer.

5 Q. (BY MR. CHOUDHRI) And have you paid Wayne  
6 Dolcefino any amount of money --

7 MR. BALLASES: Objection. Form.

8 Q. (BY MR. CHOUDHRI) -- or consideration,  
9 directly or indirectly --

10 (Crosstalk)

11 MR. BALLASES: -- (unintelligible) not to  
12 answer your question.

13 MR. CHOUDHRI: Mr. Ballases --

14 THE REPORTER: I'm --

15 MR. CHOUDHRI: Mr. Ballases, would you please  
16 let the court reporter take her turn -- please take  
17 turns. When I'm asking the question, wait till my  
18 question is over before you need to --

19 MR. BALLASES: So you've asked -- you've asked  
20 this question three times, and he's answered it three  
21 times. And all three times, I've told him -- I've  
22 objected and told him not to answer. So you don't  
23 need to ask it a fourth time.

24 It's on the record clear. I know you're not  
25 an attorney, and you're not familiar with this, but

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1 it's on the record and it's clear, I promise. Move  
2 along.

3 Q. (BY MR. CHOUDHRI) So the record is clear,  
4 when I've asked you, Have you been -- have you paid  
5 Wayne Dolcefino any amount of money, directly or  
6 indirectly, or any consideration, your answer is: I'm  
7 not going to answer that question. Is that -- is that  
8 clear --

9 MR. BALLASES: Objection --

10 Q. (BY MR. CHOUDHRI) -- for the record?

11 MR. BALLASES: Objection. Form. I've --

12 A. I'm not going to answer that question.

13 MR. BALLASES: -- objected --

14 A. I've already asked it -- answered.

15 MR. BALLASES: -- to the form. It's  
16 oppressive and harassing. The client's already  
17 answered it. I'm instructing him not to answer  
18 because it's exceeding the scope of the deposition,  
19 and it's oppressive and harassing, and it's asked and  
20 answered.

21 Did you hear me, Mr. Choudhri?

22 MR. CHOUDHRI: Mr. Ballases, throughout today,  
23 you have been frustrating this deposition.

24 MR. BALLASES: Objection. Sidebar.

25 MR. CHOUDHRI: You have been disrupting -- so



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1 please refrain from your -- your sidebar and your  
2 objections. Limit to your objections as form.

3 Q. (BY MR. CHOUDHRI) So, Mr. Khawaja --

4 MR. BALLASES: Objection. Sidebar.

5 Q. (BY MR. CHOUDHRI) -- have you paid --

6 Mr. Khawaja, have you paid -- no, let me back up.

7 Mr. Khawaja, who is Wayne Dolcefino? What  
8 does he do?

9 MR. BALLASES: Objection --

10 A. I'm not going to answer these questions.

11 MR. BALLASES: Objection. Form.

12 A. I'm sorry. You've got to move on to the  
13 claim -- claim questions, Ali, or we're gonna end  
14 this.

15 Q. (BY MR. CHOUDHRI) So, Mr. Khawaja, are you  
16 going to tell me that you're not going to describe --

17 A. Yes.

18 Q. -- who Wayne --

19 A. I'm not going to.

20 Q. -- Dolcefino is, and you're not --

21 A. Correct.

22 MR. BALLASES: Objection. Form.

23 I'm going to instruct him not to answer  
24 because your questions are oppressive and harassing,  
25 and they exceed the scope of the limited deposition.

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1 I'm instructing him not to answer. I'm doing  
2 it, Mr. Ballases.

3 Q. (BY MR. CHOUDHRI) Are you taking his  
4 instructions and not answering any questions as it  
5 relates to Wayne Dolcefino, Mr. Khawaja?

6 A. Yes, sir. Yes. I'm not. I will follow  
7 advice of counsel.

8 Q. Who is Chris Wyatt, Mr. Khawaja?

9 A. Again, that has nothing to do with this case.

10 Q. So Chris Wyatt has nothing to do with this  
11 case. So -- I want the record clear.

12 A. I -- Chris Wyatt is a witness, and he is a --  
13 he was your former chief financial officer, and that's  
14 how I know him -- or chief operating officer.

15 Q. Has he ever given you documents from the  
16 Jetall server?

17 A. From the Jetall server? I don't -- I don't  
18 know that. I don't know the answer to that question.

19 Q. Has Mr. Wyatt --

20 A. I don't know what the Jetall server is.

21 Q. Has Mr. Wyatt ever given you any documents?

22 A. No.

23 Q. Mr. Chris Wyatt has never given you any  
24 documents; that's a true statement?

25 A. I cannot discuss anything pertaining to Chris

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1 Wyatt because of attorney-client privilege, so we're  
2 not talking about Chris Wyatt.

3 Q. What is the privilege, Mr. Khawaja, with you  
4 and Chris Wyatt?

5 A. Attorney-client privilege.

6 Q. Is Chris Wyatt an attorney?

7 A. No, no. I'm the attorney; he's the client.

8 He sought counsel from me, which I provided,  
9 pertaining to this case, and I will not discuss  
10 anything further regarding him.

11 Q. Pertaining to this case, the case we're here  
12 for today.

13 A. No, pertaining to other matters involving you  
14 and him.

15 Q. So Chris Wyatt is your client; is that  
16 correct?

17 A. Yes.

18 MR. BALLASES: Objection --

19 Q. (BY MR. CHOUDHRI) And Hira Azhar is your  
20 client; correct?

21 A. Yes.

22 Q. And Azeemah Zaheer is your client; correct?

23 A. Yes.

24 MR. BALLASES: Objection. Form.

25 Q. (BY MR. CHOUDHRI) And Osama -- and Osama

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1 Abdullatif is your client; correct?

2 A. Yes.

3 MR. BALLASES: Objection. Form.

4 Q. (BY MR. CHOUDHRI) Is David Tang your client?

5 A. No.

6 MR. BALLASES: Objection. Form.

7 A. He's just a friend.

8 Q. (BY MR. CHOUDHRI) Is Rodney Drinnon your  
9 client?

10 MR. BALLASES: Objection. Form.

11 A. No.

12 Q. (BY MR. CHOUDHRI) Is Harold Polk --

13 A. He's an attorney.

14 Q. -- your client? Is Harold Polk your client?

15 MR. BALLASES: Objection. Form.

16 A. No, he's not.

17 Q. (BY MR. CHOUDHRI) Harold Polk is not your  
18 client.

19 A. Correct.

20 MR. BALLASES: Objection. Form.

21 Q. (BY MR. CHOUDHRI) How did you meet Chris  
22 Wyatt?

23 MR. BALLASES: Objection. Form.

24 A. Yeah, I can't talk about that. I'm sorry.

25 Q. (BY MR. CHOUDHRI) Why can't you talk about

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1 how you met Chris Wyatt?

2 A. That's protected.

3 Q. By what?

4 A. Attorney-client privilege.

5 Q. Are you refusing to answer when you met Chris

6 Wyatt?

7 A. Yes.

8 Q. When did the attorney-client privilege start

9 with Chris Wyatt?

10 MR. BALLASES: Objection. Form.

11 A. Since I met him.

12 Q. (BY MR. CHOUDHRI) And when did you meet him?

13 MR. BALLASES: Objection. Form.

14 A. Sometime after he left your employment.

15 Q. (BY MR. CHOUDHRI) You never met him while he

16 was employed as a paralegal for me?

17 A. No.

18 MR. BALLASES: Objection. Form.

19 Q. (BY MR. CHOUDHRI) You never saw him come to

20 court in the divorce case when you were representing

21 the -- Hira Azhar?

22 MR. BALLASES: Objection. Form.

23 A. No, I didn't, actually, to be honest with you.

24 No.

25 Q. (BY MR. CHOUDHRI) And you're not aware that

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1 Chris Wyatt worked on the case that Jetall has against  
2 Khawaja?

3 A. No --

4 MR. BALLASES: Objection. Form.

5 A. -- I'm not aware of that.

6 Q. (BY MR. CHOUDHRI) You're not aware of that --

7 A. If he --

8 Q. -- is that correct?

9 A. Correct. If he did, he never discussed it  
10 with me.

11 Q. So you're not aware that Chris Wyatt did legal  
12 work for me while he was employed for me.

13 MR. BALLASES: Objection. Form.

14 A. No.

15 Q. (BY MR. CHOUDHRI) Isn't it true that Jetall  
16 Companies has a judgment against Khawaja?

17 MR. BALLASES: Objection. Form.

18 A. "Against Khawaja," what does that mean?

19 Q. (BY MR. CHOUDHRI) Against Khawaja Partners.

20 A. Possibly.

21 MR. BALLASES: Objection. Form.

22 Q. (BY MR. CHOUDHRI) And that judgment has not  
23 been appealed and not been superceded.

24 A. Yes.

25 Q. Is that one --

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1 MR. BALLASES: Objection. Form.

2 Q. (BY MR. CHOUDHRI) -- of your motivations,

3 Mr. Khawaja?

4 MR. BALLASES: Objection. Form.

5 A. No.

6 Q. (BY MR. CHOUDHRI) So Jetall owns an asset --

7 Jetall Companies owns an asset, and that's a judgment

8 against Khawaja Partners; correct?

9 MR. BALLASES: Objection. Form.

10 A. I don't know if Jetall owns an asset or --

11 Jetall doesn't seem to be doing too well right now.

12 Q. (BY MR. CHOUDHRI) And how do you know that?

13 MR. BALLASES: Objection. Form.

14 A. I mean, there was a great article about you

15 the other day in The Real Deal. I don't know if you

16 saw that.

17 Q. (BY MR. CHOUDHRI) Have you spoken to The Real

18 Deal?

19 A. I haven't --

20 MR. BALLASES: Objection. Form.

21 A. -- but I read that article.

22 THE REPORTER: Sorry --

23 A. It's not a good look.

24 Q. (BY MR. CHOUDHRI) You haven't spoken --

25 THE REPORTER: Sorry. Sorry. Just one at a

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1 time, please. Thank you.

2 A. I haven't, no.

3 Q. (BY MR. CHOUDHRI) Has anybody on your behalf,  
4 indirectly or directly, spoken to The Real Deal?

5 MR. BALLASES: Objection. Form.

6 A. No, but a lot of people sent me that article,  
7 like real estate -- people in real estate, legal. A  
8 lot of people sent it to me.

9 Q. (BY MR. CHOUDHRI) And Chris Wyatt testified  
10 at the that hearing; correct?

11 MR. BALLASES: Objection. Form.

12 A. I don't --

13 MR. BALLASES: What hearing are you talking  
14 about, sir? I mean, come on.

15 MR. CHOUDHRI: Mr. Ballases --

16 A. You're all over the place.

17 MR. CHOUDHRI: -- can you --

18 Q. (BY MR. CHOUDHRI) Mr. Khawaja, The Real Deal  
19 quotes an order and mentions Chris Wyatt.

20 MR. BALLASES: Objection. Form.

21 A. Okay. Anything else you want to share with me  
22 about the article? I mean, that's fine.

23 Q. (BY MR. CHOUDHRI) And so have you paid Chris  
24 Wyatt any money?

25 A. No.



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1 MR. BALLASES: Objection. Form.

2 Q. (BY MR. CHOUDHRI) Mr. Khawaja, you had  
3 mentioned that you're in the business of buying  
4 judgments. Do you recall that line of testimony  
5 earlier?

6 A. Yes.

7 Q. And you've bought less than ten judgments; is  
8 that correct?

9 A. I think so.

10 Q. And your answers earlier were -- and I just  
11 want to make sure the record is clear --

12 MR. BALLASES: Objection. Sidebar.

13 Q. (BY MR. CHOUDHRI) -- that the only --  
14 Mr. Khawaja, are you done looking at your phone?

15 A. Yes. Sorry. Go ahead.

16 MR. CHOUDHRI: Just for the record, throughout  
17 the deposition, Mr. Khawaja has been continuing to  
18 look at his phone and make communications with other  
19 people in the room and has constantly looked at his  
20 phone throughout the entire duration of this  
21 deposition.

22 Q. (BY MR. CHOUDHRI) So, Mr. Khawaja, I just ask  
23 you to please refrain from looking at your phone.  
24 Okay?

25 MR. BALLASES: Objection. Sidebar.

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1 Don't instruct my client anything, and you are  
2 incorrect with your assertions.

3 MR. CHOUDHRI: Mr. Ballases, please stop  
4 talking.

5 Q. (BY MR. CHOUDHRI) Mr. Khawaja, can you please  
6 stop looking at your phone?

7 MR. BALLASES: Objection. Sidebar.

8 A. I've got a sick relative in the hospital right  
9 now. That's what I'm worried about, so...

10 Q. (BY MR. CHOUDHRI) Well, I'm sorry about your  
11 relative. I hope they get better.

12 Mr. Khawaja, which judgments -- strike that.

13 Mr. Khawaja, it's your contention that any  
14 entity that I -- at least if I heard your testimony  
15 correctly earlier, that any entity that Ali Choudhri  
16 has ownership or control in is an alter ego. Is that  
17 your contention --

18 A. Of Ali --

19 Q. -- Mr. Khawaja?

20 A. Yes, it is.

21 MR. BALLASES: Objection. Form.

22 Q. (BY MR. CHOUDHRI) So any entity that Ali  
23 Choudhri has any ownership or control of is an alter  
24 ego of Ali Choudhri; correct?

25 A. I believe that -- I believe that to be the

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case, yes.

MR. BALLASES: Objection. Form.

Q. (BY MR. CHOUDHRI) Okay. Mr. Khawaja, which judgments have you acquired?

MR. BALLASES: Objection. Form.

A. You mean other than yours? Other than the Jetall judgments?

Q. (BY MR. CHOUDHRI) Again, Mr. Khawaja --

A. Are you there?

Q. -- I believe your answers earlier were that you have not acquired any judgments other than judgments relating to Jetall or Ali Choudhri.

A. I think that's --

Q. Is that true?

A. -- correct. That's true.

MR. BALLASES: Objection. Form.

Q. (BY MR. CHOUDHRI) So what I want to do is I want to go down, because your contention is Texas REIT is an alter ego of Ali Choudhri; correct?

A. Yes.

MR. BALLASES: Objection. Form.

Q. (BY MR. CHOUDHRI) So basically what you're saying is any obligations of Ali Choudhri or any of Ali Choudhri's entities are the obligations of Texas REIT; is that correct?

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1 A. Yes. That's correct, yes.

2 Q. So it's just basically one big pot.

3 A. That's the way you've treated them, yes.

4 Q. And that's your contention, and that's the --

5 A. I believe the evidence will show that. Yes.

6 Q. And outside what's in your pleading, you don't

7 have any other evidence that --

8 MR. BALLASES: Objection. Form.

9 A. Well, we've got to do discovery -- we have to

10 do discovery, sir, which you're obstructing, but yes.

11 Q. (BY MR. CHOUDHRI) Okay. So the record is

12 clear, outside your pleading, there's no other

13 evidence other than the discovery you're yet to do.

14 MR. BALLASES: Objection. Form.

15 Q. (BY MR. CHOUDHRI) Is that correct?

16 A. We're in the -- we're in the middle of

17 discovery.

18 MR. BALLASES: Objection. Form.

19 Q. (BY MR. CHOUDHRI) Is that correct?

20 MR. BALLASES: Objection. Form.

21 A. Outside the pleading? The pleading contains a

22 lot of evidence. I don't know if you've seen the

23 attachments or not, but there's a lot. There's a lot

24 more that will have to be done.

25 Q. (BY MR. CHOUDHRI) And so you're refusing to

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1 answer any questions relating to Chris Wyatt; correct?

2 A. Yes.

3 MR. BALLASES: Objection. Form.

4 A. That's -- that encompasses attorney-client  
5 privilege. Correct.

6 Q. (BY MR. CHOUDHRI) So anything I would ask you  
7 today about Chris Wyatt, you would refuse to answer.

8 A. That's correct.

9 MR. BALLASES: Objection. Form.

10 Q. (BY MR. CHOUDHRI) Who drafted the affidavit  
11 that was attached to the petition that's attached to  
12 this proof of claim that Chris Wyatt signed?

13 MR. BALLASES: Objection. Form.

14 A. I have no idea.

15 Q. (BY MR. CHOUDHRI) You don't know --

16 A. It wasn't me.

17 Q. -- who drafted -- it wasn't you. Was it  
18 Mr. Ballases?

19 MR. BALLASES: Objection. Form.

20 Instructing not to answer. It violates  
21 attorney work product, attorney-client privilege.

22 A. I'm not answering on advice of counsel.

23 Q. (BY MR. CHOUDHRI) Does Mr. Ballases or Hoover  
24 Slovacek represent Chris Wyatt?

25 A. I don't think so.

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1 Q. Does Ashish Mahendru represent Chris Wyatt?

2 MR. BALLASES: Objection. Form.

3 A. I don't know. I mean, ask Ashish.

4 Q. (BY MR. CHOUDHRI) Did you refer Chris Wyatt  
5 to Ashish Mahendru?

6 MR. BALLASES: Objection. Form.

7 A. I mean, again, I just told you I'm not  
8 answering any questions about Chris Wyatt.

9 Q. (BY MR. CHOUDHRI) So can you explain to me  
10 why the adversary where you claim alter ego and  
11 fraudulent transfer has an attachment of Chris Wyatt  
12 as a declaration?

13 A. I mean, he had some evidence that you are an  
14 alter ego, that you have alter egos that operate under  
15 you, so he provided it. It's evidence.

16 Q. Do you hold any -- do you hold any contingency  
17 claims or rights of any adverse parties to Ali  
18 Choudhri or any of his related entities?

19 MR. BALLASES: Objection. Form.

20 A. Do I hold any -- I mean, if I did, it's  
21 attorney-client privilege, so I'm not answering that.

22 Q. (BY MR. CHOUDHRI) So any contingency claims  
23 you hold against --

24 A. Right.

25 Q. -- Texas REIT or any other entity --

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1 A. Yes.

2 Q. -- or party relating to Ali Choudhri is --  
3 you're not going to answer because it's  
4 attorney-client privilege?

5 A. Yes.

6 MR. BALLASES: Objection. Form.

7 A. And outside the scope of what you're allowed  
8 to ask me about.

9 Q. (BY MR. CHOUDHRI) Mr. Khawaja, do you have  
10 surveillance on me or any of my entities or companies?

11 MR. BALLASES: Objection. Form.

12 I'm going to instruct you not to answer. It's  
13 harassing and oppressive. It has nothing to do with  
14 the limited scope of this deposition.

15 A. I'm not answering that.

16 Q. (BY MR. CHOUDHRI) Do you have any agreement  
17 with George Lee?

18 MR. BALLASES: Objection. Form.

19 A. I don't.

20 MR. BALLASES: It's not relevant to the  
21 limited scope of this deposition; therefore, I'm going  
22 to instruct him not to answer.

23 A. I should be asking you that question. It's  
24 gonna come up in trial.

25 Q. (BY MR. CHOUDHRI) Do you have any text

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1 messages between you and George Lee?

2 MR. BALLASES: Object --

3 A. No --

4 MR. BALLASES: Objection. Form.

5 A. -- I'm not gonna talk about that.

6 MR. BALLASES: And I'm going to instruct  
7 him not to --

8 A. It has nothing to do with this.

9 MR. BALLASES: I'm going to instruct you not  
10 to answer. It violates the scope of this deposition  
11 that the judge indicated. It's harassing and  
12 oppressive. This isn't a free-for-all discovery.

13 THE WITNESS: Yeah.

14 MR. BALLASES: It's just about why the proof  
15 of claim was filed or why it's being withdrawn.

16 Q. (BY MR. CHOUDHRI) So is it your contention  
17 that you have information you've received from Chris  
18 Wyatt that has to do with the basis of your claim?

19 MR. BALLASES: Objection. Form.

20 A. I mean, he provided an affidavit in this case,  
21 so...

22 Q. (BY MR. CHOUDHRI) So again, when did he  
23 become your client, and when did you establish that  
24 attorney-client privilege?

25 MR. BALLASES: Objection. Form.



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1 A. I'm not sure when.

2 Q. (BY MR. CHOUDHRI) Do you have text messages  
3 between you and Chris Wyatt?

4 MR. BALLASES: Objection. Form.

5 A. I mean, if I did, I wouldn't disclose them to  
6 you, and nor would a court compel me to. It's  
7 attorney-client privilege.

8 Q. (BY MR. CHOUDHRI) Well, here's the thing,  
9 Mr. Khawaja. Here's the thing. There's something  
10 called a privilege log, right? I'm entitled to know  
11 if you have communications. I'm not asking you --

12 MR. BALLASES: Objection. Sidebar.

13 Q. (BY MR. CHOUDHRI) -- about the content of  
14 your communications.

15 MR. CHOUDHRI: Mr. Ballases, please stop  
16 interrupting.

17 Q. (BY MR. CHOUDHRI) Mr. Khawaja, I'm not asking  
18 you about the contents of your --

19 MR. BALLASES: (Unintelligible)

20 Q. (BY MR. CHOUDHRI) Let me finish my question  
21 before you answer. Okay?

22 I'm asking you not about -- so we're very  
23 clear, I'm not eliciting or asking you for privileged  
24 information. I'm asking you if there are  
25 communications, not the contents. Do you have --

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1 A. Even if it existed --

2 Q. -- communications with Chris -- can I finish?

3 Do you have communications with Chris Wyatt,  
4 yes or no?

5 MR. BALLASES: Objection. Form.

6 A. Even if it existed, I would not disclose that  
7 to you, nor would I be compelled to, nor is it a part  
8 of this case.

9 Q. (BY MR. CHOUDHRI) So why are you adding the  
10 declaration of Chris Wyatt as a part of this case?

11 MR. BALLASES: Objection. Form.

12 A. It's evidence.

13 Q. (BY MR. CHOUDHRI) Well, do you understand  
14 what a sword --

15 A. It's evidence of the alter (unintelligible).

16 Q. -- and shield is?

17 THE REPORTER: I'm sorry --

18 Q. (BY MR. CHOUDHRI) It's evidence of the alter  
19 ego?

20 I'm sorry. Finish your question -- your  
21 answer, Mr. Khawaja. It's --

22 A. It's evidence --

23 Q. -- evidence of what?

24 A. -- of the alter ego. It's evidence of the  
25 alter ego.

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1 Q. So Chris Wyatt has evidence of the alter ego.

2 That's your answer?

3 A. Yes.

4 Q. And you're refusing to answer any questions  
5 about Chris Wyatt.

6 A. I'm not gonna talk about any attorney-client  
7 privileged communications. Correct.

8 Q. So do you have any communications with Chris  
9 Wyatt, yes or no?

10 MR. BALLASES: Objection. Form.

11 A. I'm not gonna talk about it.

12 MR. BALLASES: Objection. Form.

13 MR. CHOUDHRI: Mr. Ballases, being emphatic on  
14 your objection doesn't change the objection.

15 Q. (BY MR. CHOUDHRI) Mr. Khawaja --

16 MR. BALLASES: Objection. Sidebar.

17 Q. (BY MR. CHOUDHRI) -- are you refusing to --  
18 are you refusing to answer the mere fact that  
19 communications exist between you and Chris Wyatt?

20 MR. BALLASES: Objection. Form.

21 A. I'm telling you that if they do exist -- I'm  
22 not confirming that they do or don't, but they would  
23 be privileged. That's it. And this is not the  
24 case --

25 Q. (BY MR. CHOUDHRI) So how did --

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1 A. This is not the case that you're going to get  
2 any of that information.

3 Q. Now, you'll agree with me that Chris Wyatt --  
4 that in your petition in adversary that you've  
5 attached to this proof of claim, you've attached a  
6 declaration of Chris Wyatt, true or false?

7 A. True.

8 Q. And you're refusing to provide me any  
9 communications or the fact that any communications  
10 even exist between you and Chris Wyatt, true?

11 MR. BALLASES: Objection. Form.

12 A. True.

13 Q. (BY MR. CHOUDHRI) Mr. Khawaja, would you  
14 please stop looking at your phone?

15 A. I'm not looking at my phone. I'm looking at  
16 the petition that you just asked me about, the  
17 adversary.

18 MR. BALLASES: Objection. Sidebar.

19 Don't instruct my client again.

20 A. This is the adversary petition I'm reading.

21 Q. (BY MR. CHOUDHRI) Mr. Khawaja, what  
22 contingency claims, if any, do you hold, indirectly or  
23 directly, against me or any of my entities?

24 MR. BALLASES: Objection. Form.

25 A. Outside the scope of this discussion. I'm not

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1 answering.

2 Q. (BY MR. CHOUDHRI) So, Mr. Khawaja, it's your  
3 contention that Texas REIT is an alter ego of every  
4 one of those entities that I have interest in;  
5 correct? That's your contention.

6 MR. BALLASES: Objection. Form.

7 Q. (BY MR. CHOUDHRI) You're refusing to answer  
8 what claims -- so is your statement or answer here,  
9 under oath, that you're refusing to answer what  
10 motivations and rights or claims or contingencies you  
11 have against Texas REIT? Now, when I --

12 MR. BALLASES: Objection. Form.

13 Q. (BY MR. CHOUDHRI) -- say "Texas REIT," that  
14 applies to any and all entities that I have ownership  
15 in, directly or indirectly; correct?

16 A. Yes, based on alter ego. Yeah, I'm not gonna  
17 give you any -- whether I have any contingency-related  
18 litigation against you on that. If I do, you'll find  
19 out about it at some point.

20 Q. So you're refusing to disclose any claims you  
21 have against the debtor.

22 MR. BALLASES: Objection. Form.

23 A. Any claims I have against the debtor? I don't  
24 have any claims against the debtor other than the ones  
25 I presented in this case.

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1 Q. (BY MR. CHOUDHRI) So when you have  
2 contingencies or claims against me, under your theory,  
3 those would be claims against the debtor as well.

4 MR. BALLASES: Objection. Form.

5 A. I don't know about that.

6 Q. (BY MR. CHOUDHRI) Do you use WhatsApp?

7 A. Yes.

8 MR. BALLASES: Objection. Form.

9 Q. (BY MR. CHOUDHRI) Have you communicated --

10 A. We're in some group -- we're in some groups  
11 together on WhatsApp, I think. Yes.

12 Q. Mr. Khawaja, did you come to me for a job?

13 MR. BALLASES: Objection. Form.

14 A. A job? I'm not talking about that, no.

15 Q. (BY MR. CHOUDHRI) You never came to me for a  
16 job.

17 A. No. Look, that's outside the scope of this  
18 conversation.

19 MR. CHOUDHRI: Mr. Osama Abdullatif needs to  
20 stop talking in the background and coaching the  
21 witness.

22 MR. BALLASES: Objection. Sidebar.

23 MR. CHOUDHRI: Mr. Ballases, please stop.  
24 Control Mr. Osama --

25 MR. BALLASES: Objection. Sidebar.

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1 MR. CHOUDHRI: -- (unintelligible) your  
2 witnesses.

3 Q. (BY MR. CHOUDHRI) Mr. Khawaja --

4 MR. BALLASES: Objection. Sidebar.

5 Q. (BY MR. CHOUDHRI) -- would you mind sharing  
6 the camera around your office there?

7 A. We're not gonna do that.

8 Q. You're not gonna do that? Okay. You're  
9 refusing to do that.

10 MR. BALLASES: Objection. Sidebar.

11 Objection. Form.

12 Q. (BY MR. CHOUDHRI) Mr. Khawaja, did you ever  
13 seek employment from Jetall Companies?

14 MR. BALLASES: Objection. Form.

15 I'm going to instruct the client not to  
16 answer. It's harassing and oppressive. It exceeds  
17 the limited scope of this deposition per the judge's  
18 instructions.

19 Stop wasting time, sir.

20 Q. (BY MR. CHOUDHRI) You can answer,  
21 Mr. Khawaja.

22 A. On advice of counsel, I'm not gonna answer  
23 that question. Sorry.

24 Q. Are you upset at Jetall Companies in any way,  
25 shape, or form?

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1 A. No.

2 Q. Are you upset at Ali Choudhri in any shape,  
3 way, or form?

4 A. I mean, I want the money that I'm owed. Just  
5 pay me the money that you owe. This will -- this will  
6 go away. It's nothing personal.

7 Q. And how much money would it take to make this  
8 go away?

9 MR. BALLASES: Objection. Form.

10 We're not -- I'm going to instruct my client  
11 not to answer. It has nothing do with the limited  
12 scope of this deposition and exceeds what the judge's  
13 orders were.

14 Q. (BY MR. CHOUDHRI) Are you going to answer the  
15 question, Mr. Khawaja?

16 A. I'm gonna follow the advice of counsel and not  
17 answer.

18 Q. So you say this is about money; Just pay me  
19 the money you owe me, and I'll go away. But you won't  
20 tell me what that amount is. Is that your answer?

21 MR. BALLASES: Objection. Form.

22 A. Yeah, we're not --

23 MR. CHOUDHRI: Is Osama Abdullatif --

24 A. -- in a settlement --

25 Q. (BY MR. CHOUDHRI) No, this is not a



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1 settlement. I'm asking you -- again, this is not  
2 settlement discussion. This is a deposition under  
3 oath on the record.

4 I'm asking you a follow-up to your answer that  
5 this is not personal; it's about money. That's all  
6 you want. You want money, and you'll go away. That's  
7 what you said. Did I hear -- did I hear your  
8 answer --

9 MR. BALLASES: Objection --

10 Q. (BY MR. CHOUDHRI) -- incorrectly, or do we  
11 need the court reporter to repeat your answer?

12 MR. BALLASES: Objection. Form.

13 Objection. Sidebar.

14 Q. (BY MR. CHOUDHRI) Are you answering the  
15 question --

16 A. You need to move along, sir. I'm not going to  
17 answer that question.

18 MR. CHOUDHRI: Ms. Court Reporter, would you  
19 read back his statement or his answer earlier: This  
20 is not personal; it's just money; if you pay me the  
21 money you owe me, I'll go away.

22 Would you read that back into the record so  
23 it's clear? There's been a lot of objections, and  
24 I've been distracted.

25 THE REPORTER: I'll need a minute to go

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1 through and find that answer.

2 MR. CHOUDHRI: Take your time. No problem.

3 Mr. Khawaja is not on the screen any longer,

4 for the record.

5 MR. BALLASES: Yeah, he is.

6 MR. CHOUDHRI: Mr. --

7 THE REPORTER: Sorry. Just off the record. I

8 just need to go off the record because I can't type

9 and look for the testimony at the same time.

10 MR. CHOUDHRI: So why don't we take a five --

11 THE WITNESS: Can you see me?

12 MR. CHOUDHRI: I'll tell you what. Why don't

13 we do this, Ms. Court Reporter. It looks like we've

14 been going for a little bit here. So it's 2:42. Why

15 don't we come back in 15 minutes at 3:00.

16 MR. BALLASES: No, we'll take a five-minute

17 break.

18 THE WITNESS: We'll take a five-minute break,

19 and that's it. We're done.

20 MR. CHOUDHRI: Again, Mr. Khawaja, this is my

21 deposition. I get to ask questions. And with all due

22 respect, you really don't dictate the -- but if you

23 need to take a break, I'm happy to let you take a

24 break --

25 THE WITNESS: I'll take a five-minute break,

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1 and that's it.

2 No? Okay. No, we don't need a break. Thank  
3 you.

4 MR. CHOUDHRI: So, Court Reporter, while  
5 you're looking for the answer, let's go and take a  
6 five-minute break. We'll come back in five minutes.  
7 We're off the record.

8 (A recess was taken.)

9 THE REPORTER: So we are back on the record.  
10 And I just please ask everybody, in order to keep the  
11 record clear, please, one speaker at a time.

12 And, Mr. Khawaja, if your counsel does have an  
13 objection, just please allow him to make the objection  
14 and then answer afterwards, just so I don't have both  
15 of you speaking. Thank you.

16 THE WITNESS: All right. Thank you.

17 MR. BALLASES: So just for the record,  
18 Ms. Court Reporter, we've looked at the live schedule  
19 that was filed by the debtor under declaration of  
20 penalty and was signed by Mr. Ali Choudhri, and it  
21 does not list Mr. Choudhri as a debtor anywhere on  
22 here, and therefore -- or excuse me -- as a creditor  
23 anywhere on here. And so, therefore, him not being a  
24 creditor based upon his own sworn document, he has no  
25 legal basis to continue to ask questions here today.

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1 So I'd like to have -- if Ms. Hood or  
2 Mr. Sather have any more questions, I'd like to finish  
3 it up. Mr. Khawaja does have to go because he has a  
4 relative who is probably passing away relatively soon  
5 in the hospital. We can then move on --

6 MR. CHOUDHRI: So --

7 MR. BALLASES: -- with the next deponents.

8 MS. HOOD: So --

9 MR. CHOUDHRI: So, Mr. Ballases --  
10 Mr. Ballases, this is my deposition. If you want --  
11 if there is a life/death situation, I'm not -- I'm  
12 happy to work with you and Mr. Khawaja on schedules.  
13 I have no problem doing that. Family's important. So  
14 if we need to reset this deposition to tomorrow or  
15 another day, I'm happy to accommodate that.

16 But what I don't want to do is have you  
17 control the deposition and who can ask questions and  
18 who can't, because I'm in the middle of my questioning  
19 of Mr. Ballases (sic). So --

20 MR. BALLASES: Okay. So --

21 MR. CHOUDHRI: -- let's continue on with the  
22 questions.

23 Q. (BY MR. CHOUDHRI) Mr. Khawaja, are you ready  
24 to answer more questions?

25 THE WITNESS: What do you think, Michael?

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1 MR. BALLASES: It's up to you. If you've got  
2 to go to the hospital, then --

3 A. Okay. I can go for a little bit longer.

4 MR. CHOUDHRI: Okay. Madam Court Reporter,  
5 would you please read the answer back while we took a  
6 break?

7 THE REPORTER: Okay. One second. Okay. So  
8 the question and answer was (Reading:) Question: Are  
9 you upset at Ali Choudhri in any way, shape, or form?

10 Answer: I mean, I want the money that I'm  
11 owed. Just pay me the money that you owe. This will  
12 go away. It's nothing personal.

13 Q. (BY MR. CHOUDHRI) Mr. Khawaja, did she read  
14 your answer correctly and accurately?

15 A. Yes.

16 Q. And so to follow up on that answer, what is  
17 the amount of the money that you claim you're owed?

18 A. Well, there's a certain amount of -- there's a  
19 certain amount that's claimed in the judgment that  
20 probably has gone up since we filed it. And, you  
21 know, you can go through that. Your attorney can  
22 discuss that with my attorney if you want to make an  
23 offer. Someone will --

24 Q. I'm not asking about a settlement,  
25 Mr. Khawaja. I'm just asking about how much money

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1 you're owed, because I can go to the oral ruling  
2 that -- from Judge Robinson about how you came up with  
3 the number, how you calculated it, and what that  
4 number is. And that's what we're here today to ask  
5 you questions about on your proof of claim.

6 So you said, Owe me -- pay me the money you  
7 owe, so my question is --

8 A. Right.

9 Q. -- what are you claiming you're owed?

10 A. Do you have a copy of the adversary?

11 Q. Go ahead, Mr. Khawaja. What is the amount of  
12 money you're owed? That's my question. Do you know?

13 A. Yeah, it's somewhere north of \$500,000. Give  
14 me one second here.

15 The total amount is \$4,847,894.68.

16 Q. I'm sorry. Would you repeat that again? The  
17 total amount that you're owed is what?

18 A. \$4,847,894.68.

19 Q. Sorry. There's somebody talking in the  
20 background. I think Osama's helping you and talking,  
21 so --

22 MR. BALLASES: Objection. Sidebar.

23 Q. (BY MR. CHOUDHRI) So what is the total amount  
24 that you need to be paid so you can go away?

25 MR. BALLASES: Objection. Form.

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1 A. \$4,847,894.68.

2 Q. (BY MR. CHOUDHRI) Okay. Thank you for your  
3 answer, Mr. Khawaja.

4 And you stand behind that number as being  
5 truthful, accurate with all lawful offsets?

6 A. I mean, I don't -- I don't know what that  
7 means, but yeah, it's truthful, for sure.

8 Q. Okay.

9 A. There are no offsets.

10 Q. There are no offsets?

11 A. No.

12 Q. Is that what you said?

13 Okay. So there are no offsets; is that  
14 correct?

15 A. That's correct.

16 Q. Okay. Mr. Khawaja, is that the basis of -- so  
17 let me just kind of set the table for a second.

18 So we said this earlier, and I just want to  
19 make sure that I don't have to go through a list of,  
20 you know, all these entities and all these other  
21 parties.

22 So when we talk about Texas REIT, when you  
23 answer the question that -- against Texas REIT, your  
24 position is that any entity that I have ownership,  
25 directly in or indirectly, is an alter ego of Texas

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1 REIT; correct?

2 MR. BALLASES: Objection. Form.

3 A. Alter ego of Ali Choudhri. Yes.

4 Q. (BY MR. CHOUDHRI) Okay. So --

5 A. And Jetall Companies.

6 Q. -- that's the basis?

7 THE REPORTER: I'm sorry?

8 Q. (BY MR. CHOUDHRI) And Jetall. So when the --

9 THE REPORTER: And who? Sorry.

10 THE WITNESS: Sorry. Of Ali Choudhri and

11 Jetall Companies.

12 THE REPORTER: Thank you.

13 Q. (BY MR. CHOUDHRI) And so that is the basis of

14 several lis pendenses that have been filed; is that

15 correct?

16 A. I don't know about several. There's one

17 that's filed in this case.

18 Q. Well, if you contend that any and all

19 liabilities and assets of Texas REIT's are alter egos

20 of Ali Choudhri, you have -- in this adversary that is

21 the basis of your proof of claim -- back up.

22 This proof -- the adversary is the basis of

23 your proof of claim; correct?

24 A. Yes.

25 Q. So in that adversary, you have filed many lis



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1 pendenses on various properties, true or false?

2 A. Yes.

3 Q. And what real property interest do you contend  
4 that you own in any of these properties?

5 A. We're a judgment creditor. So if you own it,  
6 we own it.

7 Q. So it's your contention that -- again, I just  
8 want to get the whole scope here. It's your  
9 contention that, based on the fact that you're a  
10 judgment creditor, you have real property interest in  
11 all these various properties, true or false?

12 A. Yes.

13 Q. Is that true?

14 A. True.

15 Q. Outside of that, do you have any other real  
16 property interest that you contend you own in any of  
17 these properties?

18 A. No.

19 Q. And do you know where I live?

20 MR. BALLASES: Objection. Form.

21 A. I think you live in 9201 Arabella.

22 Q. (BY MR. CHOUDHRI) 9201 Arabella?

23 MR. BALLASES: Objection. Form.

24 A. Let me see here. Ninety -- sorry -- 9201.

25 You live at Arabella PH, whatever property Arabella PH

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1 3201, LLC, owns. At the Arabella, I think, unless you  
2 moved.

3 Q. (BY MR. CHOUDHRI) And you have knowledge that  
4 I've lived there for how long?

5 MR. BALLASES: Objection. Form.

6 A. I mean, I guess at least a few years. Maybe  
7 two.

8 Q. (BY MR. CHOUDHRI) And are you aware that --

9 A. You sold your house and then -- I think so. I  
10 mean, look, I -- I'm not sure, to be honest with you.  
11 I think you live there. I can find out if you want me  
12 to.

13 Q. So you said I sold my house?

14 MR. BALLASES: Ali, can -- Mr. Choudhri, can  
15 you put yourself on the screen again so we know it's  
16 you asking questions?

17 Q. (BY MR. CHOUDHRI) So you said --

18 MR. BALLASES: Thank you.

19 Q. (BY MR. CHOUDHRI) -- I sold my house,  
20 Mr. Khawaja, that you know I sold my house?

21 A. Yeah.

22 MR. BALLASES: Objection. Form.

23 A. You sold the River Oaks house; right?

24 Q. (BY MR. CHOUDHRI) I'm asking you,  
25 Mr. Khawaja. You said I sold my house. What do you

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1 mean by that?

2 A. Yes. I think you sold your River --

3 MR. BALLASES: Objection. Form.

4 A. I think you sold the River Oaks house, and  
5 then you moved.

6 Q. (BY MR. CHOUDHRI) And how do you know that?

7 MR. BALLASES: Objection. Form.

8 A. I think -- I mean, that's just -- that's the  
9 rumors.

10 Q. (BY MR. CHOUDHRI) And who told you that?

11 MR. BALLASES: Objection. Form.

12 A. I think it was in The Real Deal.

13 Q. (BY MR. CHOUDHRI) Is that where you -- are  
14 you saying that's where you know about it?

15 A. Possibly.

16 MR. BALLASES: Objection. Form.

17 A. I don't know, to be honest with you.

18 Q. (BY MR. CHOUDHRI) Do you know who Kevin  
19 Powers is?

20 MR. BALLASES: Objection. Form.

21 A. He's an attorney. Yes.

22 Q. (BY MR. CHOUDHRI) Have you communicated with  
23 Kevin Powers?

24 MR. BALLASES: Objection. Form.

25 A. I think he called me once or twice, but no

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1 real communication with him.

2 Q. (BY MR. CHOUDHRI) Have you ever texted him or  
3 received texts from him?

4 MR. BALLASES: Objection. Form.

5 A. Not that I recall. I don't think so.

6 Q. (BY MR. CHOUDHRI) Do you know who WCW is?

7 MR. BALLASES: Objection. Form.

8 A. Some entity that you owe money, I think.

9 Q. (BY MR. CHOUDHRI) Do you know who Steven Wu  
10 is?

11 A. Another guy that you --

12 MR. BALLASES: Objection. Form.

13 A. -- that you owe money to.

14 Q. (BY MR. CHOUDHRI) And your contention is I  
15 owe money to Steven Wu?

16 A. You owe money --

17 MR. BALLASES: Objection. Form.

18 A. -- to a lot of people, including me, but yes.

19 Q. (BY MR. CHOUDHRI) And what do you know about  
20 what I owe to Steven Wu?

21 MR. BALLASES: Objection. Form.

22 A. That you defrauded him, and they have --  
23 they're seeking to recover the money that you owe them  
24 and --

25 Q. (BY MR. CHOUDHRI) And how much money is

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1 that --

2 A. -- defrauded them in the Texas REIT --

3 THE REPORTER: I'm sorry --

4 Q. (BY MR. CHOUDHRI) I defrauded in the Texas  
5 REIT case, you said?

6 A. Yes. I think some Texas REIT case. I'm not  
7 sure which one, but it's millions of dollars.

8 Q. And so is it Steven Wu that you contend that I  
9 defrauded?

10 A. Yes.

11 MR. BALLASES: Objection. Form.

12 Q. (BY MR. CHOUDHRI) And Steven Wu is owed money  
13 by Texas REIT is your contention?

14 MR. BALLASES: Objection. Form.

15 A. Yes, and there's probably many other creditors  
16 out there I'm not aware of.

17 Q. (BY MR. CHOUDHRI) Which creditors are you  
18 aware of?

19 MR. BALLASES: Objection. Form.

20 A. Only the ones that I would know. I mean, I'm  
21 one of them. So, I mean, whoever's listed in these  
22 schedules, I guess.

23 Q. (BY MR. CHOUDHRI) Have you contacted TIG  
24 Romspen? Do you know who Romspen is?

25 A. No.

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1 MR. BALLASES: Objection. Form.

2 A. I know who they are, but I have not -- I read  
3 about them in The Real Deal, but I've not contacted  
4 them.

5 Q. (BY MR. CHOUDHRI) Do you know who Mansoor  
6 Chaudhry is?

7 A. Yes.

8 Q. Do you have an attorney-client privilege with  
9 him?

10 A. No, I don't.

11 MR. BALLASES: Objection. Form.

12 Q. (BY MR. CHOUDHRI) Have you ever texted him or  
13 received texts from him?

14 A. No.

15 MR. BALLASES: Objection. Form.

16 A. I mean, yes, he's texted me. Yes, he has.

17 Q. (BY MR. CHOUDHRI) So when did you meet  
18 Mansoor Chaudhry?

19 A. Maybe two years --

20 MR. BALLASES: Objection. Form.

21 Q. (BY MR. CHOUDHRI) Under what circumstance?

22 MR. BALLASES: Objection. Form.

23 A. He's a -- he has a title company, and I've  
24 done some title work with him.

25 Q. (BY MR. CHOUDHRI) So you do some title work

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1 with him?

2 A. Yes.

3 MR. BALLASES: Objection. Form.

4 Q. (BY MR. CHOUDHRI) What is the name of his  
5 title company?

6 MR. BALLASES: Objection. Form.

7 A. I think it's called Transact Title.

8 Q. (BY MR. CHOUDHRI) And is Transact Title a  
9 tenant at 1001 West Loop?

10 MR. BALLASES: Objection. Form.

11 A. Yes.

12 Q. (BY MR. CHOUDHRI) And have you filed a lis  
13 pendens against 1001 West Loop?

14 MR. BALLASES: Objection. Form.

15 A. If it's an alter ego of yours -- no, I don't  
16 think so. Maybe not.

17 Q. (BY MR. CHOUDHRI) You're looking at Osama to  
18 answer the questions. Do you understand this  
19 deposition is me asking you, not Osama answering the  
20 questions? You understand that; right?

21 MR. BALLASES: Objection. Sidebar.

22 Don't pretend like you know what's happening  
23 over here.

24 Objection. Sidebar.

25 A. I'm not looking at anybody. But I don't know.

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1 Do you want me to file a lis pendens on 1001 West  
2 Loop?

3 Q. (BY MR. CHOUDHRI) As we sit here today, are  
4 you telling me that you have not caused any lis  
5 pendens to be filed on 1001?

6 A. No. I don't know. I don't think so.

7 Q. Do you contend 1001, the property, 1001, or  
8 the entity that owns 1001, is an alter ego of Ali  
9 Choudhri or Texas REIT?

10 A. Yes. Yes, it is.

11 Q. Do you contend --

12 A. Even if it's not listed by -- even if it's not  
13 here, it is -- anything that you control or own is an  
14 alter ego, because that's how you operate.

15 Q. Okay. Do you know who BridgeCo is,  
16 Mr. Khawaja?

17 A. Yes.

18 MR. BALLASES: Objection. Form.

19 Q. (BY MR. CHOUDHRI) Have you spoken to anybody  
20 at BridgeCo?

21 A. No.

22 MR. BALLASES: Objection. Form.

23 Q. (BY MR. CHOUDHRI) But you've sued BridgeCo;  
24 correct?

25 A. Yes.



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1 MR. BALLASES: Objection. Form.

2 Q. (BY MR. CHOUDHRI) And are you aware that  
3 BridgeCo made six loans?

4 A. Yeah.

5 MR. BALLASES: Objection. Form.

6 Q. (BY MR. CHOUDHRI) Do you know which  
7 properties BridgeCo made loans on?

8 A. There were --

9 MR. BALLASES: Objection. Form.

10 A. -- some properties in Austin and some  
11 properties in Houston, but I don't know -- I couldn't  
12 tell you it's this one or that one.

13 Q. (BY MR. CHOUDHRI) And you contend those  
14 properties are alter egos of Ali Choudhri or Texas  
15 REIT.

16 MR. BALLASES: Objection. Form.

17 A. I mean, they would be. If you own them, they  
18 would be. But I don't know if we're making that claim  
19 in this case anymore.

20 Q. (BY MR. CHOUDHRI) Have you sued Cypress  
21 BridgeCo and Magnolia BridgeCo in this case?

22 A. I think we did. And I'm not sure if we still  
23 have maintained those claims. But I know they  
24 foreclosed on their interest.

25 Q. So you're aware that BridgeCo foreclosed on

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1 the properties that you filed lis pendenses on.

2 A. Yes.

3 Q. And you realize that a lis pendens frustrates  
4 and interferes with the sale of a property.

5 Please don't look at Osama for an answer. I  
6 know you really want to.

7 MR. BALLASES: Objection --

8 MR. CHOUDHRI: But, Mr. Abdullatif, would you  
9 please stop helping Mr. Khawaja?

10 MR. BALLASES: Objection. Sidebar.

11 You don't know what you're talking about.

12 (Crosstalk)

13 MR. CHOUDHRI: Madam Court Reporter, did you  
14 get -- did --

15 (Crosstalk)

16 THE REPORTER: Sorry. What is your question,  
17 Mr. Choudhri?

18 MR. CHOUDHRI: What did Osama say? I couldn't  
19 hear him.

20 THE REPORTER: I couldn't hear him either. If  
21 I can't hear him, I can't transcribe him. And he's  
22 not on the record. Like, he's not --

23 A. Let's please continue with the deposition.

24 MR. CHOUDHRI: Mr. Osama Abdullatif, I can  
25 hear you in the background calling me a liar. That's

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1 unprofessional.

2 MR. BALLASES: Objection. Sidebar.

3 Ask your question, or I'll --

4 A. Or we're gonna cut this -- or we're gonna shut  
5 this thing down.

6 Q. (BY MR. CHOUDHRI) So, Mr. Khawaja, you're  
7 aware -- let me back up.

8 You're in the real estate business as well;  
9 right?

10 MR. BALLASES: Objection. Form.

11 A. Not really. A little bit.

12 Q. (BY MR. CHOUDHRI) Do you own real estate  
13 outside of your home?

14 A. Yes.

15 Q. Which real estate?

16 MR. BALLASES: Objection. Form.

17 A. I'm not gonna get -- I'm not gonna get into  
18 that.

19 Q. (BY MR. CHOUDHRI) Are you refusing to answer  
20 the question about what real estate you own --

21 A. Yes, I'm --

22 Q. -- outside of your house?

23 A. I am -- I am refusing to answer that.

24 MR. BALLASES: I'm instructing him not to  
25 answer because it's outside the scope of the limited

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1 deposition that the judge ordered.

2 Q. (BY MR. CHOUDHRI) So, Mr. Khawaja, we've  
3 already established many, many, many times it's your  
4 contention that any entity I own or control is an  
5 alter ego of Texas REIT; correct?

6 A. Yes.

7 MR. BALLASES: Objection. Form.

8 Q. (BY MR. CHOUDHRI) And so you're also aware,  
9 Mr. Khawaja, that when you file a lis pendens on a  
10 piece of property, you have to meet certain elements  
11 to have a lis pendens on a piece of property. Are you  
12 aware of that?

13 A. Yes.

14 Q. And do you know what those elements are?

15 MR. BALLASES: Objection. Form.

16 A. I don't.

17 Q. (BY MR. CHOUDHRI) You're unaware what the  
18 elements are to file a lis pendens against real  
19 property.

20 A. I'm not sure.

21 MR. BALLASES: Objection. Form.

22 Q. (BY MR. CHOUDHRI) You're unaware, or you're  
23 aware?

24 A. I'm not aware.

25 MR. BALLASES: Objection. Form.

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1 MR. CHOUDHRI: Mr. Ballases, it doesn't change  
2 by you yelling on the objection, so --

3 MR. BALLASES: Objection. Sidebar.

4 Q. (BY MR. CHOUDHRI) Mr. Khawaja, how many  
5 lawsuits have you been involved in where you have  
6 instructed, sponsored litigation against Texas REIT or  
7 any other entity that I own or control?

8 MR. BALLASES: Objection. Form.

9 A. I don't know. I don't -- I don't think many  
10 at all. Not as many as I could. That's for sure.

11 Q. (BY MR. CHOUDHRI) And so you have filed a lis  
12 pendens against a property at 2232 Swift Boulevard.  
13 Are you aware of that?

14 A. Yes. Yes.

15 Q. And you contend 2232 Swift Boulevard -- that  
16 property and any interest in that property is an alter  
17 ego of Texas REIT?

18 A. Or Ali Choudhri.

19 MR. BALLASES: Objection. Form.

20 A. Or Ali Choudhri.

21 Q. (BY MR. CHOUDHRI) Texas REIT or Ali --

22 A. Or Jetall.

23 Q. -- Choudhri; correct?

24 A. Or Jetall.

25 Q. Sorry?

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1 A. Or Jetall Companies, Inc.

2 Q. Okay. So basically any and all entities that  
3 I have any ownership in -- directly, indirectly --  
4 it's an alter ego, and that's what you believe.

5 A. I believe the evidence will show that, yes.

6 MR. BALLASES: Objection. Form.

7 Q. (BY MR. CHOUDHRI) But as we sit here today,  
8 you don't have any evidence --

9 A. No, we have plenty --

10 MR. BALLASES: Objection. Form.

11 A. We've been talking about it all day.

12 MR. BALLASES: Objection. Form.

13 Q. (BY MR. CHOUDHRI) So outside of whatever we  
14 talked about today, you don't have any other evidence.

15 MR. BALLASES: Objection. Form.

16 A. Not until we get into the discovery, which  
17 you're obstructing, but yes.

18 Q. (BY MR. CHOUDHRI) So this is your opportunity  
19 to tell --

20 A. You'll find out more after you and, I think,  
21 your mom's deposition coming up.

22 Q. Oh, okay. So you've sued my mom; correct?

23 A. Yes. Don't try to get out of that deposition  
24 either. I'm gonna have a court reporter, translator,  
25 everything. So don't try to get out of that.

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1 Q. Mr. Khawaja, have you -- let me pull this up.

2 Hold on.

3 Have you contacted anybody related to QB Loop

4 Property?

5 MR. BALLASES: Objection. Form.

6 A. No.

7 Q. (BY MR. CHOUDHRI) Have you contacted --

8 A. What's going on with that?

9 THE WITNESS: Sorry. Sorry.

10 A. I have not.

11 Q. (BY MR. CHOUDHRI) Have you contacted -- would

12 you dispute if third parties made statements that you

13 contacted them and told them not to do business with

14 me?

15 MR. BALLASES: Objection. Form.

16 A. I would dispute that, yeah. I mean, tell

17 them -- who said that I said that?

18 MR. BALLASES: Objection. Form.

19 Q. (BY MR. CHOUDHRI) Have you ever contacted

20 anybody who I do business with, or any of my related

21 entities, and told them not to do business with me?

22 MR. BALLASES: Objection. Form.

23 A. I mean, that's outside the scope of what we're

24 talking about, but no, unless I was specifically

25 asked.

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1 Q. (BY MR. CHOUDHRI) Have you contacted Anwar

2 Qadeer (phonetic) in relation to --

3 A. No.

4 MR. BALLASES: Objection. Form.

5 A. No. Are you trying to sue Anwar now? No.

6 Q. (BY MR. CHOUDHRI) Have you contacted Qasim --

7 Abdul Qasim (phonetic)?

8 MR. BALLASES: Objection --

9 A. Abdul Qasim?

10 Q. (BY MR. CHOUDHRI) Abdul Qasim.

11 THE REPORTER: Sorry. One at a time, please.

12 A. I never contacted -- no, he's a friend of --

13 THE REPORTER: Sorry. One at a time, please.

14 Mr. Khawaja, could you please repeat your

15 answer?

16 A. I have not.

17 MR. BALLASES: Objection. Form.

18 Please stick to the limited purpose of this

19 deposition.

20 Q. (BY MR. CHOUDHRI) And --

21 A. Don't get those guys in trouble.

22 Q. -- Mr. Khawaja, are you -- are you -- are you

23 done laughing?

24 A. Yes. Yes.

25 Q. Thank you. You understand this is a serious



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1 situation we're here, right? This is a deposition.

2 It's not a joke --

3 A. Oh, very much.

4 MR. BALLASES: Objection. Sidebar.

5 A. Very much. Very much so.

6 Q. (BY MR. CHOUDHRI) And, Mr. Khawaja, you're  
7 taking this serious; correct?

8 A. Oh, yeah, absolutely.

9 MR. BALLASES: Objection. Sidebar.

10 Q. (BY MR. CHOUDHRI) Mr. Khawaja, can you tell  
11 me why -- you know, why you believe that the BridgeCo  
12 entities are an alter ego of Texas REIT?

13 MR. BALLASES: Objection. Sidebar.

14 No, excuse me. I'm gonna go ahead, and I'm  
15 gonna actually object to this exceeding the scope of  
16 the deposition that the judge ordered and instruct him  
17 not to answer.

18 A. I'm gonna take the advice of counsel.

19 Q. (BY MR. CHOUDHRI) Mr. Khawaja, you're not  
20 going to answer the question, I understand; is that  
21 correct?

22 A. Yes.

23 Q. Mr. Khawaja, are you aware that when a lis  
24 pendens is filed on a property, a property -- the  
25 title is clouded, and it interferes with the ability

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1 for the property to be sold or refinanced?

2 A. I mean --

3 MR. BALLASES: Objection. Form.

4 A. -- you filed many of those, so you're pretty  
5 aware of what it does, so yes.

6 Q. (BY MR. CHOUDHRI) And besides whatever we've  
7 covered today, you don't have any other -- are you --

8 A. Plans?

9 Q. -- familiar with the -- sorry?

10 A. Other plans? I don't know. I'm just trying  
11 to guess what you were gonna say.

12 Q. I'm sorry, Mr. Khawaja. What was your  
13 statement?

14 A. I said -- you said, You don't have any other,  
15 and then you just trailed off. So I said, What,  
16 plans?

17 Q. What -- so I think I've asked this earlier,  
18 and you've refused to answer. I just want to make  
19 sure the record is clear. You're refusing to answer  
20 any contingency claims or any claims you own or hold,  
21 indirectly or directly, against me or any of my  
22 entities. You're refusing to answer any of those  
23 questions.

24 A. Yes --

25 MR. BALLASES: Objection --

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1 A. -- that's correct.

2 MR. BALLASES: Objection. Form.

3 Q. (BY MR. CHOUDHRI) And you're aware that  
4 2727 Kirby was foreclosed on.

5 MR. BALLASES: Objection. Form.

6 A. That's what I understand.

7 Q. (BY MR. CHOUDHRI) And you're aware that  
8 that's one of the properties you filed a lis pendens  
9 on.

10 MR. BALLASES: Objection. Form.

11 A. Sure. You owe a lot of money on it.

12 Q. (BY MR. CHOUDHRI) Is there money owed to you  
13 on 2727 Kirby?

14 A. I mean, it's an alter --

15 MR. BALLASES: Objection. Form.

16 A. -- ego of Jetall Companies, so yeah, we  
17 should've gotten something out of it.

18 Q. (BY MR. CHOUDHRI) Is that why you filed a  
19 lis pendens, so you could get something out of it?

20 MR. BALLASES: Objection. Form.

21 A. To prevent you from committing fraudulent  
22 transfers and defrauding people like you do.

23 Q. (BY MR. CHOUDHRI) And so let's elaborate.  
24 How do I defraud people?

25 MR. BALLASES: Objection. Form.

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1 A. I mean -- I mean, come on.

2 Q. (BY MR. CHOUDHRI) I just want to --

3 (Crosstalk)

4 A. You really want me to answer that question?

5 Q. (BY MR. CHOUDHRI) Absolutely. Go ahead.

6 MR. BALLASES: Objection. Sidebar.

7 It's not the opportunity to ask an improper

8 question.

9 THE WITNESS: No.

10 MR. BALLASES: It is your opportunity to ask  
11 about why a proof of claim was filed and why it was  
12 withdrawn. You are mistaken, and you're exceeding the  
13 Court's order. Please stick to the Court's limited  
14 deposition order.

15 Q. (BY MR. CHOUDHRI) Are you going to refuse to  
16 answer the question, Mr. Khawaja?

17 A. Yes.

18 MR. BALLASES: Objection. Form.

19 Q. (BY MR. CHOUDHRI) Mr. Khawaja, you're aware  
20 that following the filing of lis pendenses on various  
21 properties, those properties were foreclosed after you  
22 filed those lis pendenses, true or false?

23 MR. BALLASES: Objection. Form.

24 A. After -- I mean, what does that mean, after I  
25 filed those lis pendenses? You lost those properties

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1 because you refused to pay on them, like you've done  
2 on so many properties throughout your entire life.

3 So, you know, you excel at losing properties.  
4 That's what happened. That's what happened to  
5 2425 West Loop. Don't try to put that on me unless  
6 you want more lawsuits. We're happy to oblige.

7 Q. (BY MR. CHOUDHRI) Do you --

8 A. Yes.

9 MR. BALLASES: Objection. Sidebar.

10 A. No, I'm not done. I'm just getting started.

11 Q. (BY MR. CHOUDHRI) So continue on. I'm  
12 listening.

13 MR. BALLASES: There's no question on the  
14 table.

15 Q. (BY MR. CHOUDHRI) You're just getting  
16 started?

17 THE REPORTER: I'm sorry --

18 Q. (BY MR. CHOUDHRI) What do you mean by "just  
19 getting started" --

20 THE REPORTER: I'm sorry. Mr. Ballases, what  
21 was your objection or your comment?

22 MR. BALLASES: Objection. Form.

23 There was no question on the table.

24 Q. (BY MR. CHOUDHRI) Go ahead, Mr. Khawaja. If  
25 you want to talk, you can talk. You said you're just

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getting started --

MR. BALLASES: Objection. Sidebar.

A. Stick --

Q. (BY MR. CHOUDHRI) Do you want to --

A. Stick to the questions, please. Stick to the questions.

Q. You're answering -- you're answering the questions, so I'm allowing you to finish your answers. And you said --

MR. BALLASES: Objection. Sidebar.

Q. (BY MR. CHOUDHRI) -- you're just getting started. What do you mean by, "I'm just getting started"? That was your answer.

A. Yes. We have --

Q. (Unintelligible)

A. We have a lot of -- we have discovery to complete in this case.

Q. And so what do you mean, "I'm just getting started"? Elaborate on that --

MR. BALLASES: Objection. Form.

A. Yeah, we need -- we have to complete discovery.

Q. (BY MR. CHOUDHRI) And what evidence or information do you have that my mom is an alter ego of Texas REIT?

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1 MR. BALLASES: Objection. Form.

2 A. Have you reviewed the -- have you reviewed our  
3 evidence in this case? Have you looked at what we've  
4 been able to uncover, or no? I hope your attorneys  
5 are sharing it with you. There's a lot.

6 Q. (BY MR. CHOUDHRI) So what evidence do you  
7 have that Shahnaz Choudhri is an alter ego --

8 A. Yes.

9 Q. -- of Texas REIT?

10 A. There's money flowing through bank accounts.  
11 There's checks that she's written to entities that you  
12 control. There's personal payments going out to her  
13 from entities that you control. I mean, there's a  
14 lot. There's a lot. We're gonna get into all of  
15 that.

16 Q. And so the evidence is all within your  
17 pleadings. Is that --

18 A. Not all of it.

19 MR. BALLASES: Objection. Form.

20 A. Not all of it. There's just something --  
21 there's discovery. There's subpoenas. There's --  
22 there's things. There's a deposition coming up that  
23 you're aware of that you're gonna try to get out of.  
24 We're not gonna let you.

25 Q. (BY MR. CHOUDHRI) Have you made statements to

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1 third parties that Judge Norman is gonna do whatever  
2 you ask him to do because you have him on payroll?

3 MR. BALLASES: Objection. Form.

4 And objection. Sidebar.

5 A. Man, come on. Don't do stuff like that.

6 That's gonna get you --

7 Q. (BY MR. CHOUDHRI) Have you made a  
8 statement to anybody --

9 A. -- in a lot of trouble.

10 THE REPORTER: I'm sorry.

11 Q. (BY MR. CHOUDHRI) Have you made --

12 THE REPORTER: One person at a time, please.

13 A. That's -- that's gonna get you into a lot of  
14 trouble with the FBI. I wouldn't do that. That's a  
15 mistake on your part.

16 Q. (BY MR. CHOUDHRI) Have you ever made any  
17 statements like that? Have you ever made any  
18 statements --

19 A. No.

20 Q. -- like that?

21 MR. BALLASES: Objection. Form.

22 A. That's very dangerous of you to say that. I'm  
23 just warning you. It's very dangerous.

24 MR. CHOUDHRI: Mr. Ballases --

25 Q. (BY MR. CHOUDHRI) Mr. Khawaja --



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1 THE WITNESS: Make sure you get a copy of this  
2 transcript, please --

3 Q. (BY MR. CHOUDHRI) -- you've never made --

4 THE WITNESS: -- and provide that.

5 Q. (BY MR. CHOUDHRI) You --

6 THE REPORTER: Sorry -- okay.

7 A. I would stop if I were you. I would stop  
8 right now if I were you.

9 Q. (BY MR. CHOUDHRI) Mr. Khawaja, please. I'm  
10 asking the questions. Okay?

11 A. Yeah, you are.

12 Q. Have you met with Anthony Gill or Kenneth  
13 Shaitelman?

14 MR. BALLASES: Objection. Form.

15 A. I'm not gonna --

16 (Crosstalk)

17 MR. BALLASES: I'm going to instruct you not  
18 to answer. That has nothing to do with the proof of  
19 claim that was filed or the reason that we've offered  
20 to withdraw it, and therefore, I'm instructing not to  
21 answer. It exceeds the scope of the judge's order.

22 So I object to the form of the question.

23 A. I'm not answering.

24 Q. (BY MR. CHOUDHRI) Mr. Khawaja, were you  
25 present on September 6, 2023, when Chris Wyatt, your

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1 client, testified on the stand in Judge Manor's court?

2 MR. BALLASES: Objection --

3 A. No.

4 MR. BALLASES: Objection. Form.

5 A. I wasn't.

6 Q. (BY MR. CHOUDHRI) Were you present around  
7 September 2023 in front of Judge Manor regarding a  
8 case styled Naissance versus Zaheer?

9 MR. BALLASES: Objection. Form.

10 A. I don't even know if I was or not, but that's  
11 outside the scope of this purpose of this deposition,  
12 so move on.

13 Q. (BY MR. CHOUDHRI) Are you aware that Chris  
14 Wyatt, your client, testified that he has given you  
15 my -- Jetall Companies' hard drive?

16 MR. BALLASES: Objection. Form.

17 A. Not -- not in the -- within the scope of this  
18 conversation -- I mean this deposition. But if he  
19 testified to that, I'd have to look back and see.  
20 Maybe he did.

21 Q. (BY MR. CHOUDHRI) Is Chris Wyatt truthful?

22 MR. BALLASES: Objection. Form.

23 A. You hired him. What do you think?

24 Q. (BY MR. CHOUDHRI) Have you hired --

25 THE WITNESS: Look, I'm done, Michael. This

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1 is it. This is getting into things --

2 MR. BALLASES: Okay.

3 THE WITNESS: -- that are unrelated. So we

4 can --

5 MR. BALLASES: And you've got to go see your

6 family --

7 THE WITNESS: I have to go see my family --

8 MR. BALLASES: Then we'll take it up with a

9 judge.

10 THE WITNESS: Thank you.

11 (Crosstalk)

12 Q. (BY MR. CHOUDHRI) Are you going to walk out

13 of this deposition?

14 THE REPORTER: I'm sorry --

15 A. Yes.

16 Q. (BY MR. CHOUDHRI) No --

17 THE REPORTER: Sorry. One at a -- sorry. One

18 at a time, please. Thank you.

19 MR. CHOUDHRI: I am not done with my --

20 THE WITNESS: I have a medical --

21 MR. CHOUDHRI: -- questions.

22 THE WITNESS: -- emergency.

23 Q. (BY MR. CHOUDHRI) If you have a medical

24 emergency, we can agree to a rescheduling. Your

25 medical emergency, Mr. Khawaja, is you have a family

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1 member in the hospital; correct?

2 A. Yes, I do.

3 MR. BALLASES: You don't need to answer any  
4 more questions.

5 He has to get out of here. You took up enough  
6 time --

7 THE WITNESS: We'll take it up with a judge.

8 Q. (BY MR. CHOUDHRI) Mr. Khawaja --

9 MR. BALLASES: Do you want a five-minute  
10 break, or do you want to start?

11 Q. (BY MR. CHOUDHRI) Mr. Khawaja --

12 MR. BALLASES: You go. I got it.

13 Q. (BY MR. CHOUDHRI) -- the deposition is still  
14 going. Are you going to get up and walk out?

15 MR. CHOUDHRI: Madam Court Reporter --

16 MR. BALLASES: Yes, he's got to --

17 MR. CHOUDHRI: -- would you --

18 MS. HOOD: Okay. If I can weigh in here, I  
19 had some follow-up questions for him; very few, but I  
20 do have follow-up questions.

21 MR. BALLASES: How much time? Like, how much  
22 would you estimate, Ms. Hood?

23 MS. HOOD: Ten minutes.

24 MR. BALLASES: It's up to you. If you've got  
25 to get out of here --

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1 MR. CHOUDHRI: But I'm not done --

2 MS. HOOD: But it's -- I need -- Mr. Choudhri  
3 hasn't passed the witness. But I did want to go on  
4 the record that I do have a few more questions for  
5 him.

6 MR. BALLASES: Okay. Well --

7 THE WITNESS: We'll take it up if we need to  
8 with a judge.

9 MR. BALLASES: Okay. Then unless we're going  
10 to go directly to your ten minutes, then he's got to  
11 get to the hospital.

12 MR. CHOUDHRI: Mr. Ballases, if he's got to go  
13 to the hospital, is there a mutually agreeable time  
14 before he leaves that we can agree to maybe --

15 MR. BALLASES: No.

16 MR. CHOUDHRI: -- pick this up?

17 MR. BALLASES: No.

18 MR. CHOUDHRI: Are you not agreeing to resume  
19 the deposition at a convenient time after his  
20 emergency for his visitor -- for his family member in  
21 the hospital?

22 MR. BALLASES: I'm not right now. You've had  
23 plenty of time to ask questions. You've asked  
24 questions that had nothing to do with the limited  
25 scope of the deposition. I let you ask them. I

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1 probably shouldn't have. And so you used your time as  
2 you saw fit.

3 Do you all want to take a two-minute break or  
4 five-minute break before we start the next one, or no?

5 MR. CHOUDHRI: Mr. Ballases, I am -- this is  
6 still my deposition that I'm asking questions on. I  
7 want the record to be clear. Have you instructed your  
8 witness to leave? Have you instructed the witness to  
9 leave --

10 MR. BALLASES: He's gone. Yes, he is gone.  
11 He is gone. I've instructed him to leave because he  
12 has a family member who is dying. I don't know how  
13 much clearer I can make that. Stop repeating  
14 yourself.

15 MR. CHOUDHRI: Well, Mr. Ballases --

16 MR. BALLASES: So you can either --

17 MR. CHOUDHRI: -- as you know -- can I finish  
18 talking, please, before you keep --

19 MR. BALLASES: No --

20 MR. CHOUDHRI: -- cutting me off?

21 MR. BALLASES: -- you can't. You waste  
22 everybody's time.

23 So we can start with the next deposition.

24 It's clear that --

25 MR. CHOUDHRI: Mr. Ballases --

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1 MR. BALLASES: -- he's left, and it's clear  
2 you want to ask questions.

3 So we can start with the next deposition now  
4 or in two minutes. Please make your decision.

5 Stephen, if you want to make it because you're  
6 the lead, that's fine.

7 MS. HOOD: Can I just say on the record that I  
8 would like to finish my questioning of the deponent  
9 when he has the next available opportunity that's  
10 convenient for everybody so I can ask my four  
11 questions.

12 MR. BALLASES: And I would -- that's fine.  
13 You can take it up with the Court. He was on record  
14 for five hours. Take away maybe the 30 minutes where  
15 we argued about the judge's oral order. Four and a  
16 half hours, that's plenty of time for this deposition  
17 to go forward and for y'all to complete it.

18 We have two more people here, and I have till  
19 4:30. I'd like to get started to go as fast as  
20 possible, but it's y'all's call.

21 MS. HOOD: Okay. Well, I'll just --

22 MR. CHOUDHRI: Mr. Ballases, the time is --  
23 the time is 3:30 p.m. Is that --

24 Or, Court Reporter, would you just confirm  
25 what time we have right now?

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1 MR. BALLASES: No one needs to confirm the  
2 time. Do you want to get started with the next one or  
3 not? I mean, stop wasting everybody's time?

4 MS. HOOD: I just want to -- for my part of  
5 this, I wasn't -- I didn't adjourn the deposition with  
6 regard to this deponent for my questioning. I was  
7 waiting for it to come back, to cycle around with me  
8 again. I have a few more questions for him, and I  
9 want to finish those.

10 And I understand he's left, and I understand  
11 the basis for it, and I wish all Godspeed to his  
12 family member. And I don't want to get involved in  
13 any sort of issue about whether someone needs to  
14 leave, doesn't need to leave, that sort of thing,  
15 right? I just -- and if we have to go back to the  
16 judge for my four questions, I'm happy to do it.

17 I just want that on the record for me. What  
18 the other lawyer does and what Mr. Choudhri does --

19 MR. BALLASES: (Unintelligible)

20 MS. HOOD: -- I'm not in control of that.

21 MR. BALLASES: I understand. You've made  
22 it -- you've put it on the record twice. That's fine.  
23 I understand, and I'll stipulate that you do have more  
24 questions.

25 Do we want to go to the next witness now?



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1 MR. CHOUDHRI: Mr. Ballases, would you at  
2 least provide, subject to your client's availability,  
3 times you're available to resume the deposition of  
4 Omar Khawaja?

5 MR. BALLASES: No. No, I will not. I've said  
6 that twice now.

7 MR. CHOUDHRI: Are you not --

8 MR. BALLASES: Do we want to move to the next  
9 deposition?

10 MR. CHOUDHRI: Are you going to refuse to make  
11 him available --

12 MR. BALLASES: Stop wasting time. I'm not  
13 going to provide it unless we have an order from a  
14 judge. Do you understand? Stop wasting time. We've  
15 got a limited amount --

16 MR. CHOUDHRI: Well, I just want to --

17 MR. BALLASES: -- of time --

18 MR. CHOUDHRI: -- get this on the --  
19 (Crosstalk)

20 MR. BALLASES: -- basis to take a deposition.

21 Do we want to move to the next person or not?

22 Please tell me.

23 MR. CHOUDHRI: Before --

24 MR. BALLASES: I would say, Stephen, it's your  
25 job to say it.

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1 MR. SATHER: Yeah, I'm prepared --  
2 MR. CHOUDHRI: Mr. --  
3 MR. SATHER: -- to move to the next --  
4 MR. CHOUDHRI: Mr. Ballases --  
5 MR. SATHER: -- witness --  
6 MR. BALLASES: All right. Let's go.  
7 MR. SATHER: Who do you have --  
8 MR. CHOUDHRI: Mr. Ballases --  
9 MR. SATHER: -- up next?  
10 THE REPORTER: I'm sorry --  
11 MR. BALLASES: Osama.  
12 THE REPORTER: Okay.  
13 MR. CHOUDHRI: Mr. Ballases --  
14 MR. BALLASES: Osama's ready to go.  
15 MR. CHOUDHRI: Time out. I just want to get  
16 this on the record very clearly, Mr. Ballases.  
17 MR. BALLASES: Oh, Jesus.  
18 MR. CHOUDHRI: I just want to make it --  
19 MR. BALLASES: It's on the record clearly.  
20 Stop wasting time.  
21 MR. CHOUDHRI: You are not willing to  
22 cooperate to resume the deposition of Omar Khawaja  
23 absent a court order. Is that your position?  
24 MR. BALLASES: I've stated my position. Let's  
25 move forward.

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1 Let's take a two-minute break, and then

2 Osama's going to be in this chair.

3 THE REPORTER: Okay. So I am going off the

4 record.

5 (End of proceedings at 3:31 p.m.)

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## EXHIBIT 6

**THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

In re:

GALLERIA 2425 OWNER, LLC,

Debtor.

## Chapter 11

Case No. 23-34815

## ORDER GRANTNG MOTION TO COMPLY WITH THE GATEKEEPING PROVISIONS OF THE CONFIRMED CHAPTER 11 PLAN

BEFORE THE COURT is the Motion to Comply with the Gatekeeping Provisions of the Confirmed Chapter 11 Plan.

The Court hereby GRANTS the motion.

IT IS THEREFORE HEREBY ORDERED that the claims raised by Ali Choudhri and Naissance Galleria, LLC against the Bank can proceed in the following cases:

*Naissance Galleria, LLC v. Zaheer, et al.*, Cause No. 2023-43755, pending in the 80th District Court of Harris County, Texas;

*Galleria 2425, LLC, Naissance Galleria, LLC and Choudhri v. NBK*, Adversary Case No. 23-06009, pending in this Court; and

*Choudhri v. NBK and Zaheer*, Adversary Case No. 23-03263,  
pending in this Court.

Dated:

UNITED STATES BANKRUPTCY COURT

## EXHIBIT 7

**IN RE GALLERIA 2425 OWNER, LLC, CASE NO. 23-34815**  
**SERVICE LIST (a/o July 2, 2024)**

**Debtor:**

Galleria 2425 Owner, LLC  
1001 West Loop South Ste 700  
Houston, TX 77027

**Debtor's Counsel:**

Reese W. Baker  
Baker & Associates  
950 Echo Lane Ste 300  
Houston, TX 77024

James Q. Pope  
The Pope Law Firm  
616 Savoy Drive Ste 1125  
Houston, TX 77036

**U.S. Trustee:**

Office of United States Trustee  
Attn: Jana Smith Whitworth  
515 Rusk Street Suite 3516  
Houston, TX 77002

**Chapter 11 Trustee:**

Christopher R. Murray  
602 Sawyer Street Ste 400  
Houston, TX 77007

**Chapter 11 Trustee's Counsel:**

R. J. Shannon  
Shannon & Lee LLP  
2100 Travis Street Ste 1525  
Houston, TX 77002

**Governmental Entities:**

Harris County Tax Assessor  
P O Box 4622  
Houston, TX 77210

Harris County, et al.  
P O Box 2928  
Houston, TX 77252-2928

**Twenty Largest Creditors:**

Caz Creek Lending  
118 Vintage Park Blvd No. W  
Houston, TX 77070

Cirro Electric  
P O Box 60004  
Dallas, TX 75266

City of Houston  
P O Box 1560  
Houston, TX 77251-1560

City of Houston Water Department  
P O Box 1560  
Houston, TX 77251-1560

Datawatch Systems  
Suite 200  
4520 East West Highway  
Bethesda, MD 20814

Firetron  
10101A Stafford Centre Dr.  
Stafford, TX 77477

First Insurance Funding  
450 Skokie Blvd  
Northbrook, IL 60062

Gulfstream Legal Group  
1300 Texas Street  
Houston, TX 77002

*(Returned to Sender / Unable to Forward)*

Gulfstream Legal Group  
720 N Post Oak Rd Ste 355  
Houston, TX 77024

Hayward PLLC  
10501 N Central Expy Ste 106  
Dallas, TX 75231-2203

HNB Construction, LLC  
521 Woodhaven  
Ingleside, TX 78362

Houston Community College System  
c/o Tara Grundemeier  
Linebarger, Grogan, Blair & Sampson  
P O Box 3064  
Houston, TX 77253-3064

Houston Independent School District  
P O Box 4668  
Houston, TX 77210  
*(Returned to Sender / Unable to Forward)*

Lexitas  
P O Box 734298 Dept 2012  
Dallas, TX 75373

Nationwide Security  
2425 W Loop South Ste 300  
Houston, TX 77027  
*(Returned to Sender / Unable to Forward)*

Nichamoff Law Firm  
2444 Times Blvd Ste 270  
Houston, TX 77005

T&R Mechanical  
21710 White Oak Drive  
Conroe, TX 77306-8848  
*(Returned to Sender / Unable to Forward)*

TKE  
3100 Interstate North Cir SE 500  
Atlanta, GA 30339

Zindler Cleaning Service Co.  
2450 Fondren Ste 113  
Houston, TX 77063

**Other Creditors / Interest Holders:**

2425 WL, LLC  
60 West 2nd Street  
Freeport, NY 11746

ADT  
P O Box 382109  
Pittsburgh, PA 15251

Ali Choudhri  
1001 West Loop South 700  
Houston, TX 77027

Ash Automated Control Systems, LLC  
P O Box 1113  
Fulshear, TX 77441

CFI Mechanical, Inc.  
6109 Brittmoore Rd  
Houston, TX 77041

CNA Insurance Company  
P O Box 74007619  
Chicago, IL 60674

Comcast  
P O Box 60533  
City of Industry, CA 91716

Environmental Coalition Inc.  
P O Box 1568  
Stafford, TX 77497

Ferguson Facilities Supplies  
P O Box 200184  
San Antonio, TX 78220

Jetall Companies Inc.  
2425 West Loop South Ste 1100  
Houston, TX 77027-4210

Kings 111 Emergency Communications  
751 Canyon Drive Suite 100  
Coppell, TX 75019

Logix Fiber Networks  
P O Box 734120  
Dallas, TX 75373



Mueller Water Treatment  
1500 Sherwood Forest Dr  
Houston, TX 77043

Smart Office Solutions  
6623 Theall Road  
Houston, TX 77066-1213  
(Returned to Sender / Unable to Forward)

Waste Management  
P O Box 660345  
Dallas, TX 75266

Metwall Design Solutions LLC  
10931 Day Road  
Houston, TX 77043-4901

US Retailers LLC d/b/a Cirro Energy  
Attn: Bankruptcy Department  
P O Box 3606  
Houston, TX 77253-3606

Naissance Galleria, LLC  
c/o Law Office of Nima Taherian  
701 N Post Oak Rd Ste 216  
Houston, TX 77024

H.N.B. Construction, LLC  
c/o Malcolm D. Dishongh  
P O Box 2347  
Humble, TX 77347-2347

CC2 TX, LLC  
14800 Landmark Blvd Ste 400  
Dallas, TX 75254

MacGeorge Law Firm  
2921 E 17th St Bldg D Ste 6  
Austin, TX 78702  
(Returned to Sender / Unable to Forward)

MacGeorge Law Firm  
701 Tillery Street Ste 12  
Austin, TX 78702

**Executory Contract Counterparties:**

2425 West Loop LLC dba Metwall Design  
Solutions LLC  
2425 West Loop South Ste 800  
Houston, TX 77027-4214  
(Returned to Sender / Unable to Forward)

2425 WL, LLC  
13498 Pond Springs Rd  
Austin, TX 78729-442  
(Returned to Sender / Unable to Forward)

2425 WL, LLC  
700 Lavaca Street Ste 1401  
Austin, TX 78701  
(Returned to Sender / Unable to Forward)

Bankable Equities  
2425 West Loop South Ste 600  
Houston, TX 77027-4203

Boho Lounge  
2425 West Loop South Ste 100  
Houston, TX 77027-4205  
(Returned to Sender / Unable to Forward)

CNA Insurance Company  
P O Box 74007619  
Chicago, IL 60674

Eyebrows 4UTX LLC  
2425 West Loop South Ste 340b  
Houston, TX 77027-4205

First Insurance Funding  
450 Skokie Blvd  
Northbrook, IL 60062

G3 Global Services LLC  
2425 West Loop South Ste 310  
Houston, TX 77027-4208

Galloworks  
2425 West Loop South Ste 400  
Houston, TX 77027-4205

Jetall Companies Inc.  
2425 West Loop South Ste 1100  
Houston, TX 77027-4210

Kudrath Enterprises PLLC  
2425 West Loop South Ste 350  
Houston, TX 77027-4208

Nationwide Investigations & Security Inc.  
2425 West Loop South Ste 300  
Houston, TX 77027-4207  
*(Returned to Sender / Unable to Forward)*

Shah Sloan LLC  
2425 West Loop South Ste 501, 503 and 523  
Houston, TX 77027-4205  
*(Returned to Sender / Unable to Forward)*

SIBS International Inc.  
2425 West Loop South Ste 900  
Houston, TX 77027-4205  
*(Returned to Sender / Unable to Forward)*

SIBS International Inc.  
2425 West Loop South Ste 350  
Houston, TX 77027  
*(Returned to Sender / Unable to Forward)*

SprintCom Inc.  
2425 West Loop South, Rooftop  
Houston, TX 77027-4205  
*(Returned to Sender / Unable to Forward)*

St. Christopher Holdings GP LLC  
2425 West Loop South Ste 700  
Houston, TX 77027-4205

UL Therapy  
2425 West Loop South Ste 315  
Houston, TX 77027-4211  
*(Returned to Sender / Unable to Forward)*

Uptown Cosmetic and Implant Dentistry  
2425 West Loop South Ste 333  
Houston, TX 77027-4211

**Parties Requesting Notice:**

Jeannie Lee Andressen  
Tara Grundemeier  
Linebarger Goggan Blair & Sampson LLP  
P O Box 3064  
Houston, TX 77253-3064  
*Counsel for City of Houston, Houston  
Community College System, and Houston  
ISD*

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McCathern Houston  
2000 West Loop South Ste 1850  
Houston, TX 77027  
*Counsel for Rodney Drinnon*

Susan Fuertes  
Harris County Attorney's Office  
P O Box 2928  
Houston, TX 77252-2928  
*Counsel for Harris County, Attn: Property  
Tax Division*

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Porter & Powers PLLC  
5900 Memorial Drive Ste 305  
Houston, TX 77027  
*Counsel for 2425 West Loop, LLC  
(Returned to Sender / Unable to Forward)*

James Robert MacNaughton  
Porter & Powers PLLC  
1776 Yorktown St Ste 300  
Houston, TX 77056  
*Counsel for 2425 West Loop, LLC  
(Returned to Sender / Unable to Forward)*

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2221 S. Voss Road, Suite 200  
Houston, TX 77057  
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Stephen Wayne Sather  
Mark E. Smith  
Barron Newburger, P.C.  
7320 N Mopac Expy Ste 400  
Austin, TX 78731  
*Counsel for 2425 WL, LLC*

Howard Marc Spector  
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12770 Coit Road Ste 850  
Dallas, TX 75251  
*Counsel for CC2 TX, LLC*

Broocks Wilson  
Kean Miller LLP  
711 Louisiana Suite 1800  
Houston, TX 77002  
*Counsel for Sonder USA Inc.*

Ali Choudhri  
2425 West Loop South 11th Floor  
Houston, TX 77027

David Tang  
6711 Stella Link #343  
West University Place, TX 77005  
*Counsel for Azeemeh Zaheer*

Omar Khawaja  
5177 Richmond Ave Ste 1065  
Houston, TX 77056  
*Counsel for Azeemeh Zaheer*

**ENTERED**

November 01, 2024

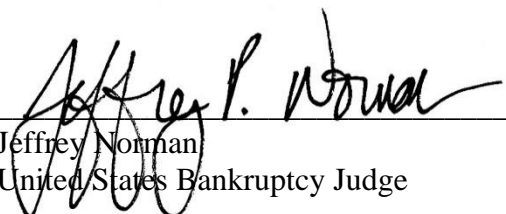
Nathan Ochsner, Clerk

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION****IN RE:****GALLERIA 2425 OWNER, LLC,****Debtor.**§  
§  
§  
§  
§  
§  
§**CASE NO: 23-34815****CHAPTER 11****ORDER DENYING MOTION**

This matter is before the Court on the Motion to Comply with the Gatekeeping Provisions of the Confirmed Chapter 11 Plan (ECF No. 802) filed by Ali Choudhri. The movant incorrectly set this matter for hearing for a date that is not available for self-calendaring. Available dates are listed on the Court's website.<sup>1</sup> Additionally, Bankruptcy Local Rule 9013-1(c) requires pleadings that may be self-calendared, such as this one, to contain language identifying the time and place of the hearing after the required notice language.<sup>2</sup>

**THEREFORE, IT IS ORDERED** that the Motion to Comply with the Gatekeeping Provisions of the Confirmed Chapter 11 Plan is denied without prejudice.

SIGNED 11/01/2024



\_\_\_\_\_  
Jeffrey Norman  
United States Bankruptcy Judge

<sup>1</sup> The Court's website is located at: <http://www.txs.uscourts.gov/page/united-states-bankruptcy-judge-jeffrey-p-norman>.

<sup>2</sup> "If the motion may be self-calendared, this language must be added at the end of the notice: There will be a hearing on this motion on [date] at [time] in courtroom \_\_\_\_\_, [address]."

**THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

In re:

GALLERIA 2425 OWNER, LLC,

Debtor.

## Chapter 11

Case No. 23-34815

**MOTION TO COMPLY WITH THE GATEKEEPING PROVISIONS OF THE  
CONFIRMED CHAPTER 11 PLAN**

**THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.**

**THERE WILL BE A HEARING ON THIS MOTION ON DECEMBER 18, 2024  
AT 11:00 AM IN COURTROOM 403 AT 515 RUSK ST., HOUSTON, TEXAS  
77002.**

**REPRESENTED PARTIES SHOULD ACT THROUGH THEIR RESPECTIVE ATTORNEYS.**

**To the Honorable Court:**

Ali Choudhri<sup>1</sup> hereby files this motion to comply with the gatekeeping provisions of the confirmed Chapter 11 Plan (Dkt. No. 566) (the “Plan”) and would respectfully show as follows:

1. When the National Bank of Kuwait, S.A.K.B., New York Branch (“NBK” or the “Bank”) proposed a plan of reorganization in this case (Dkt. No. 194), the Bank snuck several provisions into its proposed plan that exist solely for its own benefit. The Bank included itself among the “Exculpated Parties” that enjoy the Plan’s exculpation provision, and among the “Released Parties” covered by the Plan’s third-party release, even though the Bank is not a debtor in bankruptcy and has no connection to the Debtor, Galleria 2425 WL Owner, LLC or the bankruptcy estate other than as a lender. (*See* Plan arts. I(A)(39) & (78); *id.* IX(C) & (D)) The Bank also granted itself the benefit of the Plan’s gatekeeping provision, requiring parties to *any* litigation against the Bank bearing a relationship to this bankruptcy—pending in any court, anywhere—to receive approval from this Court before that litigation can continue. And the parties must obtain that approval according to a procedure and standards appearing nowhere in the Bankruptcy Code or the rules of state or federal procedure requiring them to demonstrate those claims

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<sup>1</sup> Naissance Galleria, LLC has also raised claims against the Bank, but as the result of an injunction entered in state court which is presently on appeal, Choudhri is not currently permitted to take action on Naissance’s behalf. *See* Appellant’s Opening Br. at 12, *Naissance Galleria, LLC v. Zaheer*, No. 01-23-00727-CV (Tex. App. Dec. 18, 2023) For that reason, Choudhri is filing this motion solely on his own behalf but provides information on the claims brought by Naissance Galleria, LLC for informational purposes. And because of the factually intertwined nature of the claims asserted by Choudhri and Naissance, the Court should give Naissance’s claims the same treatment as Choudhri’s for purposes of satisfying the gatekeeping provision.

are “colorable.” No legitimate bankruptcy purpose is furthered by extending this gatekeeping provision to the Bank. And the litigation subjected to the gatekeeping provision has no connection to, or effect on, the Debtor, the estate, or the Plan’s consummation. Instead, extending the gatekeeping provision to the Bank is simply the Bank’s reward for proposing the plan that the Court approved, a plan that already richly rewards the Bank with the right to credit bid on the valuable asset at the center of this bankruptcy—at a foreclosure sale the Bank itself arranged.

2. The Bank now demands that the Court enforce the terms of the Plan’s gatekeeping provision and invites the Court to dismiss claims against the Bank in the following three pending cases (the “Challenged Litigation”):

*Naissance Galleria, LLC v. Zaheer, et al.*, Cause No. 2023-43755, pending in the 80th District Court of Harris County, Texas;

*Galleria 2425, LLC, Naissance Galleria, LLC and Choudhri v. NBK*, Adversary Case No. 23-06009, pending in this Court; and

*Choudhri v. NBK and Zaheer*, Adversary Case No. 23-03263, pending in this Court.

(See Dkt. No. 758 at 2-3; Dkt. No. 771)

3. But the Court should reject the Bank’s invitation. Gatekeeper provisions certainly have their uses. And the Plan’s gatekeeping provision may have some legitimate use in protecting the Trustee in this case. But the Bank’s demand to invoke that protection for itself is a bridge too far. This Court’s gatekeeping services are not a party favor that the Bank can obtain simply by participating in the bankruptcy. Nor are they a convenience

whereby the Bank can shed liabilities simply because it would like to be rid of them. The only legitimate purposes for a gatekeeping order include protecting the Debtor, the estate, and the implementation of a bankruptcy plan. None of those purposes are served here. Allowing the Bank to make use of the Plan's gatekeeping provision would therefore contravene longstanding precedent, exceed the confines of the Bankruptcy Code, and violate fundamental limits on bankruptcy courts' jurisdiction. Accordingly, the Plaintiffs should not be forced to satisfy the Plan's gatekeeping provision before proceeding.

4. But even if the Court did stretch its gatekeeping powers to protect the Bank, there should be no doubt that each of the cases among the Challenged Litigation satisfies the gatekeeping provision's requirements. This Court has already declined to exercise jurisdiction over one of these cases—finding that it would not “affect assets of the bankruptcy estate”—and the Court should not revisit that decision to exercise jurisdiction over that case now. (Order, Adv. No. 23-03259 (Bankr. S.D. Tex. Jan. 11, 2024) [Dkt No. 24]) All three cases concern a core set of operative facts regarding uncontroversial lender-liability claims that are colorable under any standard, which is why no *other* court has dismissed them. This Court should not be the first. The Challenged Litigation should be permitted to proceed.

#### **BACKGROUND**

5. The plan of reorganization that the Bank proposed (Dkt. No. 194) and the Court confirmed (Dkt. No. 566) contains several provisions that protect the Bank and other non-debtors from claims against other non-debtors. The Plan's “Exculpation” provision covers specified “Exculpated Parties,” which are defined to include the Bank (Plan art.



I(A)(39)), protecting them from liability arising from conduct relating to the bankruptcy itself, including such actions as “filing, negotiating, prosecuting, administering, formulating, implementing, soliciting support or acceptance of, confirming or consummating” the Plan, the Purchase Agreement, or the property to be distributed under the Plan (*id.* art. IX(C)).

6. The Plan’s “Estate Releases” covers certain “Released Parties,” which are also defined to include the Bank (Plan, art. I(A)(78)), granting them protection from claims by “the Debtor” or the “Estate” concerning “the money borrowed by the Debtor” (*id.* art. IX(D)).

7. By their terms, neither of these provisions apply to the Challenged Claims. While the Bank is both an Exculpated Party and a Released Party, neither of the Plaintiffs in those cases, Ali Choudhri and Naissance Galleria, LLC (*see* Dkt. 758 at 2) qualify as “the Debtor” or part of the “Estate.” Ali is the “Debtor’s principal.” (*Id.*) And Naissance is provided mezzanine financing for the Debtors’ purchase of the property at issue. So the Plan’s Estate Release provision does not apply to these claims. The Exculpation provision does not apply either, because these claims arose before the bankruptcy and therefore do not concern any Released Party’s conduct during the bankruptcy.

8. Yet oddly, the Plan’s gatekeeper provision provides protection that is broader than both the Estate Releases and Exculpation provisions. That gatekeeping provision pertains to any “Person who has held, holds, or may hold Claims” that are “in any way *related* to the Debtor,” so long as they are brought “against any Released *Party*”—even if the claims themselves are not released under the Estate Releases. (Plan, Art. IX(E)) And

the gatekeeper provision does not merely apply to claims challenging conduct occurring *during* the bankruptcy but covers claims that “arose *before* the Petition Date.” (*Id.*) For these claims, the parties must seek “notice and a hearing” wherein the parties must demonstrate to the Court that the claims asserted are valid before they can proceed. (Plan, Art. IX(E)) And to demonstrate the validity of that claim, the party must demonstrate that the claim is “colorable” and that the party “has standing and is otherwise entitled to assert” it. (*Id.*)

9. The gatekeeper provision therefore purports to convey to the Bankruptcy Court the authority to approve, control, adjudicate, and ultimately terminate claims in pending litigation—including cases pending in other courts—merely because that litigation is “related to the Debtor,” according to a test and a procedure appearing nowhere in the Code or the federal rules. It allows the Bank to make use of this power to have the Court dismiss claims that are not even released under the Plan. And the Bank now invokes this provision to have the Court terminate all the Plaintiffs’ litigation against the Bank—even when the courts where that litigation is pending would allow that litigation to proceed, and even where the litigation at issue would not have any effect on the bankruptcy estate itself. That is not something the Court can do—nor is it something the Court *should* do.

## ARGUMENT

### **I. The Bank cannot invoke the Plan’s gatekeeping provision to dismiss any of the claims against the Bank in the Challenged Litigation.**

10. The Court should not dismiss any of the claims asserted against the Bank in the Challenged Litigation because none of those claims can properly be subject to the Plan’s gatekeeping provision. So the Plaintiffs are not required to obtain the Court’s

approval before pursuing them. And even if the Plaintiffs are required to obtain the Court's gatekeeping approval to proceed on these claims, Plaintiffs can readily make the showing required to obtain that approval, because Plaintiffs' claims are grounded in theories of lender liability personal to them that have long been recognized under Texas law. That makes them colorable by any standard.

**A. Bankruptcy courts' gatekeeping powers can only be invoked to protect trustees and other court-appointees—not private parties serving in no official bankruptcy capacity like the Bank.**

11. The first problem with the Bank's invocation of the Court's gatekeeping authority is that the Bank's demand exceeds the limited authority that bankruptcy courts possess to approve, control, adjudicate, or terminate claims in pending litigation. There is nothing in the Bankruptcy Code that conveys such gatekeeping power to bankruptcy courts. Instead, that power is derived from the century-old Supreme Court case, *Barton v. Barbour*, 104 U.S. 126 (1881). "Under the '*Barton* doctrine,' the bankruptcy court may require a party to 'obtain leave of the bankruptcy court before initiating [or maintaining] an action in district court *when the action is against the trustee or other bankruptcy-court-appointed officer, for acts done in the actor's official capacity.*'" *NexPoint Advisors, L.P. v. Highland Capital Mgmt., L.P. (In re Highland Cap. Mgmt., L.P.)*, 48 F.4th 419, 439 (5th Cir. 2022) (quoting *Villegas v. Schmidt*, 788 F.3d 156, 159 (5th Cir. 2015) (emphasis added)). The *Barton* doctrine was created to "prevent trustees from being subject to legal proceedings that interfere with their ability to administer the estate." *In re Cir. City Stores, Inc.*, 557 B.R. 443, 447 (Bankr. E.D. Va. 2016); *see also generally* COLLIER ON BANKRUPTCY ¶ 10.01 (16th ed. 2023) (citing and discussing cases). The doctrine therefore

serves to protect trustees and other bankruptcy-court appointees from vexatious and harassing litigation that could drain the estate and hamper bankruptcy plan implementation.

12. There are several reasons why the Bank cannot legitimately invoke the *Barton* doctrine to have the Court terminate any claims against the Bank in the Challenged Litigation. For one thing, because the *Barton* doctrine exists only to protect trustees and other bankruptcy-court appointees, it cannot be invoked by private parties like the Bank that are not serving in any official court-appointed capacity. Indeed, in *Highland Capital*, the Fifth Circuit refused to “extend gatekeeping protections to non-debtors,” including Highland’s interim CEO. *Matter of Highland Cap.*, 48 F.4th at 435–39 (vacating gatekeeping provision “as to all parties *except* Highland Capital, the Committee and its members, and the Independent Directors for conduct within the scope of their duties”). And the Fifth Circuit’s only recent opinion that actually applies the *Barton* doctrine did so in the context of a trustee, not a private corporation with no official bankruptcy role. *See In re Foster*, No. 22-10310, 2023 WL 20872, at \*5–\*6 (5th Cir. Jan. 3, 2023). For this reason alone, the Bank is not entitled to invoke the Bankruptcy Court’s gatekeeping authority.

13. Furthermore, not only are *Barton*’s gatekeeping protections reserved for actors appointed to serve in official bankruptcy capacities, they only protect those actors for actions taken within the scope of their “official duties.”<sup>2</sup> But the Bank has no official

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<sup>2</sup> *In re Ondova Ltd. Co.*, 914 F.3d 990, 993 (5th Cir. 2019); *see also In re Christensen*, 598 B.R. 658, 665 (Bankr. D. Utah 2019); *Phoenician Mediterranean Villa, LLC v. Swope (In re J & S Props., LLC)*, 545 B.R. 91, 105 (Bankr. W.D. Pa. 2015). A typical example is litigation against a receiver who seizes or otherwise attempts to administer property that is not receivership property,

duties in implementing the Plan or overseeing the Debtor’s dissolution. The foreclosure sale at the center of the bankruptcy will be conducted and overseen by the Liquidation Trustee. (*See* Plan, art. VI(A)) The only duties that the Plan specifically assigns to the Bank are purely ministerial. And the only substantive right that the Plan provides to the Bank is the completely voluntary (and unofficial) right to credit bid the amount of its debt at the foreclosure sale for its own private benefit, which comes with a contractual promise to pay certain junior claims if its bid is successful. (*See* Plan, Introduction) The Challenged Litigation does not contest the Bank’s exercise of any of these powers, rights, or responsibilities conveyed under the Plan. That litigation pertains only to the Bank’s pre-bankruptcy conduct that arose long before the Plan was ever proposed. For this additional reason, *Barton* does not apply.

14. Indeed, the only reason the Plan contains gatekeeping protections for the Bank is that the Bank *proposed* the Plan—and thus snuck that protection into the Plan for itself, demanding it as a condition to undertaking its minimal responsibilities in implementing the Plan. And the Bank did not seek this protection to benefit the estate, but simply to allow it to escape litigation it would rather not face. That is not a legitimate use of *Barton* gatekeeping powers. The Fifth Circuit has held that even when private parties face “exposure” to truly “vexatious” and frivolous litigation, bankruptcy courts are not empowered to use gatekeeping powers to halt it. *See Highland Capital Mgmt.*, 48 F.4th at

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but actually belongs to a third party. *See In re DMW Marine, LLC*, 509 B.R. 497, 506 (Bankr. E.D. Pa. 2014) (citations omitted).

430, 440 n.19. And as explained below—the Challenged Litigation is neither vexatious nor frivolous.

**B. Bankruptcy courts’ gatekeeping powers have been significantly constrained by the Supreme Court’s decision in *Purdue Pharma*.**

15. In any event, whatever gatekeeping powers bankruptcy courts possess have been significantly constrained by the Supreme Court’s recent decision in *Harrington v. Purdue Pharma L.P.*, 144 S. Ct. 2071 (2024) (“*Purdue Pharma*”), which held that “[t]he bankruptcy code does not authorize a release and injunction that, as part of a plan of reorganization under Chapter 11, effectively seek to discharge claims against a nondebtor without the consent of affected claimants.” *Id.* A bankruptcy court’s exercise of its gatekeeping authority to dismiss litigation against non-debtors is the functional equivalent of the non-consensual releases outlawed by *Purdue Pharma*—especially when used to dismiss litigation pending in other courts. Both involve exercises of authority to control, adjudicate, and ultimately terminate claims in litigation without consent, and without consideration—and *Purdue Pharma* confirms that this something that bankruptcy courts are not empowered to do.

16. For all these reasons, allowing the Bank to terminate the Challenged Litigation would exceed the Court’s legitimate authority to impose gatekeeping conditions under *Barton*. If the Bank wants to halt this litigation, it can do so through established procedural mechanisms in the Challenged Litigation.

**C. The Court would exceed its jurisdiction by dismissing the Challenged Litigation.**

17. The Court would also exceed its jurisdiction by using the gatekeeping powers

provided under the Plan to adjudicate and dismiss the Challenged Litigation. The Bank seeks only to dismiss litigation against itself, and dismissing that litigation affects only the Bank—having no conceivable effect on the Debtor or the estate. Indeed, on January 11, 2024, this Court remanded one of the proceedings among the Challenged Litigation—Cause No. 2023-43755—back to the 80th District Court of Harris County because it determined that “all the causes of action constitute claims rooted in Texas state law,” “there are no bankruptcy issues or claims in the state court litigation,” and “there has been no showing that the remand would affect assets of the bankruptcy estate.” (Case No. 23-03259 [Dkt No. 24] (Bankr. S.D. Tex. Jan. 11, 2024)) The same is true of the other cases in the Challenged Litigation—because, as the Bank insists, these cases all share the same “basic facts and claims.” (Dkt. No. 758 at 4) But that shared lack of connection to the estate deprives the Court of jurisdiction to resolve any of these cases through its gatekeeping powers.

18. As the Fifth Circuit recognized in *Highland Capital*, the question of whether a claim may be resolved by a bankruptcy court through exercise of gatekeeping powers under *Barton* is entirely separate from the question of whether the Court has *jurisdiction* to resolve that litigation. 48 F.4d at 439 (holding, after approving of a gatekeeping provision to protect certain court-appointed officials, that “the bankruptcy court, faced with pre-approval of a claim” on remand, would still have “to determine whether it had subject matter jurisdiction over that claim in the first instance.”). That makes sense, because the mere fact that the Plan contains a gatekeeping provision does not confer jurisdiction to resolve claims under that gatekeeping power: “[P]arties cannot confer subject matter

jurisdiction on federal courts,” including through a bankruptcy plan. *Randall & Blake Inc. v. Evans*, 196 F.3d 579 (5th Cir. 1999).

19. Instead, “[j]urisdiction for bankruptcy cases is rooted in the provisions of 28 U.S.C. § 1334.” *Matter of Walker*, 51 F.3d 562, 568 (5th Cir. 1995) (citing *Celotex Corp. v. Edwards*, 514 U.S. 300, 303 (U.S.1995) (stating that “[t]he jurisdiction of the bankruptcy courts ... is grounded in and limited by statute”)). And a “third-party action” between two non-debtors “does not create ‘related to’ jurisdiction” under section 1334 “when the asset in question is not property of the estate and the dispute has no effect on the estate.” *Feld v. Zale Corp. (In re Zale Corp.)*, 62 F.3d 746, 753 (5th Cir. 1995). Accordingly, because the claims against the Bank asserted in the Challenged Litigation do not have any effect on the estate, the Court lacks jurisdiction to hear them—much less dismiss them.

20. It does not matter that the Plan’s gatekeeper provision requires that the dispute must be “related to the Debtor” to fall within its scope. (Plan, art. IX(E)). Mere “shared facts between the third-party action and a debtor-creditor conflict do not in and of themselves suffice to make the third-party action ‘related to’ the bankruptcy.” *In re Zale Corp.*, 62 F.3d at 753. Accordingly, a mere factual interrelationship between the Challenged Litigation and the arguments asserted in the bankruptcy does not convey jurisdiction to the Court to resolve that litigation.

21. The Bankruptcy Court therefore lacks the power to require the Plaintiffs to comply with the gatekeeping orders to maintain that litigation, and the Plaintiffs in the Challenged Litigation are not required to obtain this Court’s permission before maintaining it. *See Tufts v. Hay*, 977 F.3d 1204, 1210-11 (11th Cir. 2020) (“Thus, under the



‘conceivable effects’ test for section 1334(b), the Bankruptcy Court did not have jurisdiction to consider Tufts’s action, and Tufts counsel were not required to obtain leave from that court before filing this action in the District Court.”).

**II. The claims raised against the Bank satisfy the Plan’s gatekeeping provision because they raise colorable lender-liability claims that the Plaintiffs have standing to pursue.**

22. Yet even if the Plaintiffs’ claims against the Bank in the Challenged Litigation may be properly subjected to the Plan’s gatekeeping provision, those claims satisfy the gatekeeping provision’s standard for obtaining this Court’s permission to maintain those claims.

23. The remaining two actions include claims against the Bank, but these claims easily satisfy the gatekeeping provision’s low threshold for maintaining a claim. Two of these cases originated in state court, and one was remanded in January. (Case No. 23-03259 [Dkt No. 24] (Bankr. S.D. Tex. Jan. 11, 2024)) The final case is an adversary proceeding that the Debtor filed in this court in conjunction with its original bankruptcy. *See Exhibit 1* (Original Complaint, No. 23-06009 (Bankr. S.D. Tex. Sept. 19, 2023) [Dkt. No. 1]) And the claims raised against the Bank in both cases are “colorable.”

24. The term “colorable” is not defined in the Plan or in the gatekeeping provision, but it nevertheless invokes the exceptionally low standard for determining whether a defendant has been fraudulently joined to avoid diversity jurisdiction. *See Overholt v. Purina Animal Nutrition LLC*, Case No. 1:14-CV-1216, 2015 WL 1631855, at \*2 (W.D. Mich. Apr. 13, 2015) (“Under the fraudulent joinder rule, courts may disregard the citizenship of parties against whom there is no ‘colorable’ cause of action.”). This

standard is “similar to, but more lenient than, the analysis applicable to a Rule 12(b)(6) motion to dismiss.” *Casias v. Wal-Mart Stores, Inc.*, 695 F.3d 428, 433 (6th Cir. 2012). And even under a Rule 12(b)(6) analysis, the standard that courts apply is decidedly lenient and plaintiff-friendly, requiring a court to evaluate the sufficiency of plaintiff’s complaint by accept[ing] all well-pleaded facts as true, viewing them in the light most favorable to the plaintiff.” *In re Katrina Canal Breaches Litig.*, 495 F.3d 191, 205 (5th Cir. 2007) (internal quotation marks and alteration omitted). The Court must resolve all disputed questions of fact and ambiguities in the controlling state law in favor of the non-removing party. *Coyne*, 183 F.3d at 493. And to be “colorable,” a claim need not meet “the stricter 12(b)(6) pleadings under *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009).” *Overholt*, 2015 WL 1631855, at \*7-8.

25. Plaintiffs’ remaining claims against the Bank readily meet this lenient standard. The cases concern a common core of operative facts underlying all three cases in the Challenged Litigation relating to the Bank’s efforts to foreclose on the Debtor’s property so it could obtain that property for itself. *See* The Bank loaned the Debtor over \$50 million to purchase the property (Dkt. No. 565 at 4), but throughout the life of the loan, the Bank made it progressively more difficult for the Debtor to pay that loan back. As Plaintiffs have alleged in the state court proceedings, the Bank inserted itself directly into the Debtor’s business operations, interfering with those business operations in numerous unjustified ways. **Exhibit 2** (Plaintiff’s Sixth Amended Petition, No. 2023-22748 (Harris County Dist. Ct. Dec. 18, 2023)). And the pleadings in Case No. 23-6009, the adversary proceeding which remains pending in this Court, contains similar allegations of

interference by the Bank. (Ex. 1, ¶¶9-21)

26. For example, the Bank thwarted the Debtor's efforts on at least *five* different occasions to sell interests in the building that would have cleared the Bank's debt—often through strategic declarations of defaults or foreclosure postings designed to discourage prospective buyers. (*See* Ex. 2, ¶¶ 22, 31- 33) The Bank likewise refused to approve or ignored at least *nine* different offers to lease space in the building, thereby preventing the Debtor from raising funds to pay off the loan, eventually forcing the Debtor to bring suit. (*Id.* ¶¶23, 27)

27. After the parties settled their litigation through a Confidential Settlement Agreement (Dkt. No. 403-4) that reduced the principal amount due under the loan, Plaintiff alleged that the Bank improperly disclosed the terms of the Confidential Settlement Agreement in direct violation of its express confidentiality obligations by disclosing the new loan balance to potential purchasers of the property, thereby revealing the Debtor's financial struggles, improperly impacting these prospective buyers' evaluation of the property's market value, "chill[ing] the market" for the property, and converting these potential buyers who would have negotiated a sale with the Debtor into potential purchasers of the Bank's note. (*See* Ex. 2, ¶¶28-29, 63-64)

28. The Bank also actively attempted to wrest control of the Debtor and its property from Choudhri by interfering with Choudhri's control of Naissance. The Bank worked in league with Azeema Zaheer, Choudhri's ex-girlfriend, who acted as his agent in running Naissance until Ali exercised his right to take over control of the company from her. (*See* Ex. 2, ¶¶ 36-46) And these efforts by the Bank and Zaheer were all part of a larger

effort by Choudhri's disgruntled business partner, Osama Abdullatif, to seize Choudhri's business interests by brute force and fraud. Abdullatif has arranged to have hard drives seized from Choudhri's companies (**Exhibit 3** at 1 [Declaration of Quanell X Farrakhan No. 1]) He has also even arranged for Choudhri to be accused of a murder-for-hire plot to kill Abdullatif himself, which authorities dismissed as "a hoax." (*Id.*; *see also* **Exhibit 4** [Quanell X Farrakhan Aff. No. 2]) And Omar Khawaja, an attorney and close business associate of Abdullatif, admits to representing Abdullatif and Zaheer in furtherance of Abdullatif's avowed goal of seizing all of Choudhri's business interests through litigation—under their theory: "If [Ali] own[s] it, we own it." (**Exhibit 5** [Deposition of Omar Khawaja] at 23: 30: 17-21; 163:8-165:2; 194:3-6)

29. Plaintiffs supported these allegations with voluminous documentary evidence, including examples of lease proposals that were rejected or ignored and elicit communications between Bank representatives and Zaheer. (*See* Ex. 2, pp. 6-7, 8, 9) Indeed, Plaintiffs produced a key document in their pleadings in which the Bank encouraged Zaheer to "stay on" until the Bank could find a "suitable replacement for her," even after Choudhri had exercised his right to regain control over the company, thereby demonstrating the Bank's intentional efforts to interfere with Choudhri's management of Naissance. (*See* Dkt. No. 88-29 at 1-2) The operative pleadings in these actions raise numerous claims against the Bank, including breach of contract, tortious interference, fraud, business disparagement, breach of the duty of good faith and fair dealing, unjust enrichment, and conspiracy. *See* Ex. 2, ¶¶ 62, 104)

30. The Plaintiffs have also alleged how the Debtor, Naissance, and Choudhri all

experienced independent injuries from the Bank's conduct: While the Debtor was deprived of its right to survive and thrive as an ongoing business, Naissance and Choudhri suffered their own loss of a significant asset. And this establishes that Naissance and Choudhri each have standing to pursue claims against the Bank independently.

31. While the facts alleged in the Challenged Litigation paint an extraordinary factual picture, they nevertheless present classic lender liability claims that have long been recognized under Texas law. Such lender-liability claims frequently involve both breach-of-contract *and* tort claims. *See Williams v. National Mortg. Co.*, 903 S.W.2d 398, 404 (Tex. Ct. App. 1995); *Jones v. First Nat'l Bank of Anson*, 846 S.W.2d 107, 109 (Tex. Ct. App. 1992, no writ) (concerning causes of action for breach of duty of good faith and fair dealing, breach of fiduciary duty, negligent misrepresentation, conversion, estoppel, and violations of the Deceptive Trade Practices Act); *Lamar Sav. Ass'n v. White*, 731 S.W.2d 715, 717-18 (Tex. Ct. App. 1987) (causes of action for breach of contract, breach of fiduciary duty, usury, duress, estoppel, and tortious interference).

32. And courts have found such lender-liability claims to be viable under factual circumstances that are virtually identical to those at issue in this case. Texas courts have found that lenders can be held liable for wrongful defaults and wrongful acceleration. *See, e.g., Rey v. Acosta*, 860 S.W.2d 654 (Tex. Ct. App. 1993); *Dixon v. Brooks*, 604 S.W.2d 330, 334 (Tex. Ct. App. 1980). Courts also routinely permit lenders to be held liable in the

context of improper refusals to approve leases.<sup>3</sup> And courts have even allowed borrowers to maintain claims that banks have conspired with others to interfere with their borrowers' businesses. *See, e.g., State Nat'l Bank v. Farah Mfg. Co.*, 678 S.W.2d 661 (Tex. Ct. App. 1984). Indeed, the Bankruptcy Court for the Northern District of Texas recently found a lender liable under factual circumstances that are equally extreme to this case. *See Bailey Tool & Mfg. Co., et al. v. Republic Bus. Credit (In re Bailey Tool & Mfg. Co.)*, Adv. No. 16-03025-SGJ (Bankr. N.D. Tex. December 23, 2021) (holding lender liable under numerous theories for, among other things, taking aggressive action to protect its interests, impacting the company's liquidity, and communicating in secret with the company's customers to have them pay the bank instead of the company). These cases demonstrate that the legal theories that Plaintiffs have asserted are well-founded in Texas law, and the allegations, while extraordinary, are hardly implausible. And that is why no court has ever dismissed them. That makes them colorable.

33. And while, during plan confirmation, the Court concluded that these claims were "implausible" and "not viable" (Dkt. No. 565 at 17), Plaintiffs respectfully submit that these determinations should not be the Court's final word on the matter. During plan confirmation, the Plaintiffs were not permitted to present, and the Court was not permitted to hear, a full airing of the evidence to support the Plaintiffs' claims. It heard a mere summary. But even in that limited summary, the Court heard testimony from two of the

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<sup>3</sup> *See, e.g.,* Metropolitan Corporate Counsel, *Liability Awaits the Unwary: Lenders and Leasing Decisions* (Dec. 13, 2004), <https://bit.ly/4e6fGe7>.

state's most respected attorneys, Tom Phillips, former Chief Justice of the Texas Supreme Court, and Jerry Alexander, both of whom felt the claims were so strong that they were both willing to take the case on contingency. (*See* Dkt. No. 570) While the Court discounted that testimony because the lawyers explained only that the Debtor "had claims" but never "explained how or why these claims arose," those questions are answered by the operative pleadings in the pending litigation, which provide extensive factual detail and evidence regarding the origin and basis for these claims. (Dkt. No. 565 at 17)

34. The Court made barely any mention of the factual or legal merits of those claims. Instead, the Court simply found the claims incredible, questioning why the Debtor had "never been able" to pay the note, determining that it was unlikely likely that the Bank had "breached" the Settlement Agreement first, excusing the Debtor's own failure to pay, and challenging Choudhri's credibility as a witness. (Dkt. No. 565 at 17) But the first of these holdings ignore the Plaintiffs' factual allegations—which the Court must accept as true—that the Bank interfered with the Debtor's ability to pay the note. And the latter two should not weigh in the balance in determining whether Plaintiffs' claims against the Bank are "colorable," which requires examining solely the allegations pleaded and setting aside questions of witness credibility. Indeed, the fact that two well-respected Texas attorneys are willing to pursue the litigation on a contingency basis provides ample evidence that the claims are in fact "colorable."

35. Finally, while the Court expressed concern about the motivations behind these various pieces of litigation, concluding that they were primarily meant "to postpone a real estate foreclosure" (Dkt. No. 565 at 16), those concerns are unfounded. Lender

liability claims are frequently asserted in efforts to halt foreclosure. *See, e.g., Williams*, 903 S.W.2d at 404; *Jones*, 846 S.W.2d at 109. And the factual context in which those claims arose does not undercut their viability.

### CONCLUSION

For these reasons, Ali Choudhri respectfully requests that this Motion to Comply with the Gatekeeping Provisions of the Confirmed Chapter 11 Plan be granted, and that none of the claims in the challenged litigation should be dismissed.

Respectfully submitted,

*/s/ J. Carl Cecere*

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Choudhri*



**CERTIFICATE OF SERVICE**

The undersigned certifies that on October 30, 2024, a true and correct copy of the foregoing was served via the Court's CM/ECF system to all parties who are deemed to have consented to ECF electronic service, and via US mail, including to each of the parties listed below.

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**J. Carl Cecere**

## EXHIBIT 1

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
VICTORIA DIVISION**

*In re:*

**GALLERIA 2425 OWNER, LLC**

*Debtor,*

**GALLERIA 2425 OWNER, LLC,  
 NAISSANCE GALLERIA, LLC, AND  
 ALI CHOUDHRI**

*Plaintiffs,*

**V.**

**NATIONAL BANK OF KUWAIT, S.A.K.P.,  
NEW YORK BRANCH**

***Defendant.***

[illegible]

**Case No. 23-60036**  
**(Chapter 11)**

Adversary No. \_\_\_\_\_

**CONTAINS JURY DEMAND**

**GALLERIA 2425 OWNER, LLC, NAISSANCE GALLERIA, LLC,  
AND ALI CHOUDHRI'S ORIGINAL COMPLAINT AGAINST  
NATIONAL BANK OF KUWAIT, S.A.K.P., NEW YORK BRANCH**

COME NOW Galleria 2425 Owner, LLC, Naissance Galleria, LLC, and Ali Choudhri (“*Plaintiffs*”), and make and file this their Original Complaint against National Bank of Kuwait, S.A.K.P., New York Branch (“*Defendant*”), and for same show the Court as follows:

## I. JURISDICTION AND VENUE

1. This Court has personal jurisdiction over the Defendant named in this Complaint due to the fact that the Defendant transacts business in the State of Texas, including entering into a contract with a resident of the State of Texas performable in whole or in part within the State of Texas, or have committed a tort in whole or in part in Texas and are thus subject to the Texas Long

Arm Statute, Section 17.042 of the Texas Civil Practice and Remedies Code. The Court also has personal jurisdiction over the Defendants pursuant to 29 U.S.C. §1132(f).

2. The Court has subject matter jurisdiction of this Adversary Proceeding pursuant to 28 U.S.C. § 1334.

3. This adversary proceeding constitutes a core proceeding under 28 U.S.C. § 157(b)(2)(A), (B), (C), (D), (H), and (O) because it will determine the amount of NBK's claim against the Debtor. To the extent the Court determines that any of the claims asserted herein are not core, the Plaintiffs hereby request and demand a trial by jury.

4. Venue of the Bankruptcy Case and the Adversary Proceeding is appropriate in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

## **II.** **PARTIES**

### **A. Galleria 2425 Owner, LLC.**

5. Galleria 2425 Owner, LLC ("**Debtor**") is a limited liability company doing business in Texas and is the owner of the building located at 2425 West Loop S., Houston, Texas ("**2425 Building**"). It is the Debtor in the bankruptcy case in which this Adversary is filed.

6. Naissance Galleria, LLC is a limited liability company doing business in Harris County, Houston, Texas.

7. Ali Choudhri is an individual residing in Harris County, Texas.

8. Defendant National Bank of Kuwait, S.A.K.P., New York Branch ("**NBK**") is a banking corporation organized under the laws of Kuwait, acting through its New York Branch. Defendant has not designated a registered agent for service of process in the State of Texas, but under Rule 7004(a)(8) of the Federal Rules of Bankruptcy Procedure, NBK may be served by mailing a copy of the Complaint to Corporation Service Company, 299 Park Avenue, New York,

New York 10171. Plaintiff requests that the clerk issue citation at this time. NBK has also filed a motion to dismiss the bankruptcy of Debtor and it and its counsel will be served by ECF in that proceeding.

### **III. FACTUAL BACKGROUND**

9. In 2018, Defendant NBK loaned certain funds to Debtor. There have been various disputes between the Debtor and NBK about the timeliness of payments and the extent and validity of Defendant's security, but the gravamen of Debtor's Complaint is NBK has continually interfered with the Debtor's ability to lease the 2425 Building to produce revenue and Debtor's ability to sell the 2425 Building to pay NBK off. Every time NBK has so interfered, it has then blamed the Debtor for its inability supposedly to meet some of the loan terms.

10. For example, in January 2021, Plaintiff Ali Choudhri, who is vilified by NBK in various pleadings, had the building at 2425 West Loop South, Houston, Texas, the asset of the Debtor, sold for a purchase price of \$85 million, more than enough to clear NBK's debt. Attached hereto as **Exhibit 1** is a letter dated January 15, 2021 from SIBS International and two purchase contracts which would have paid off not only NBK, but left the Debtor and the other Plaintiffs with a great deal of value. NBK, rather than facilitate this sale, issued a formal notice of default to the Debtor and its intent to accelerate the loan on June 29, 2021, while the SIBS International deal was in progress, killing that deal.

11. The same was true with regard to NBK's interference with the Debtor's attempt to lease space in the building to provide revenue so it could operate and make loan payments. By August 2021, this situation had become untenable due to NBK's refusal to approve new tenants and new leases, prompting the Debtor on August 13, 2021 to send NBK a detailed letter regarding lease-up and renewal prospects for discussions, none of which, it seemed NBK would approve.

♦ **Healthcare Service Organization**

- •Size: 130,000+ RSF – large client requirement in their preliminary planning stages:  
•Industry: Healthcare Service Organization •Type of use: Administration Offices  
•Direct/Sublease •Commencement date: Q3/2023 •Term:5-10 yrs. They are specifically VERY interested in amenities available, for example: deli, gym, day care, conference center (# of seats), training center (# of seats).

♦ **Invesco**

- We met with the team twice and are actively pursuing them for 2425. They are interested in a 157-month lease term for 208,830 SF of Net Rental Area.

♦ **Financial Services Firm**

- Office •AREA: West Houston (610 West, Hwy 290, Beltway 8) •SPACE: Open Concept  
•SIZE: Approximately 20,000 – 25,000 rsf •PARKING: 5/1000 ratio •OCCUPANCY: Late 2Q22/Early3Q22 •TERM: 36-60 months with renewal options •This tenant is currently at 24 Greenway on their top floor and have been looking at other A buildings.

♦ **Beyond Finance**

- We are discussing a 68-month lease term for +/- 40,000 rentable SF.

♦ **Banco Affirme**

- We submitted a 64-month lease term for 4,545 SF of Net Rental Area.

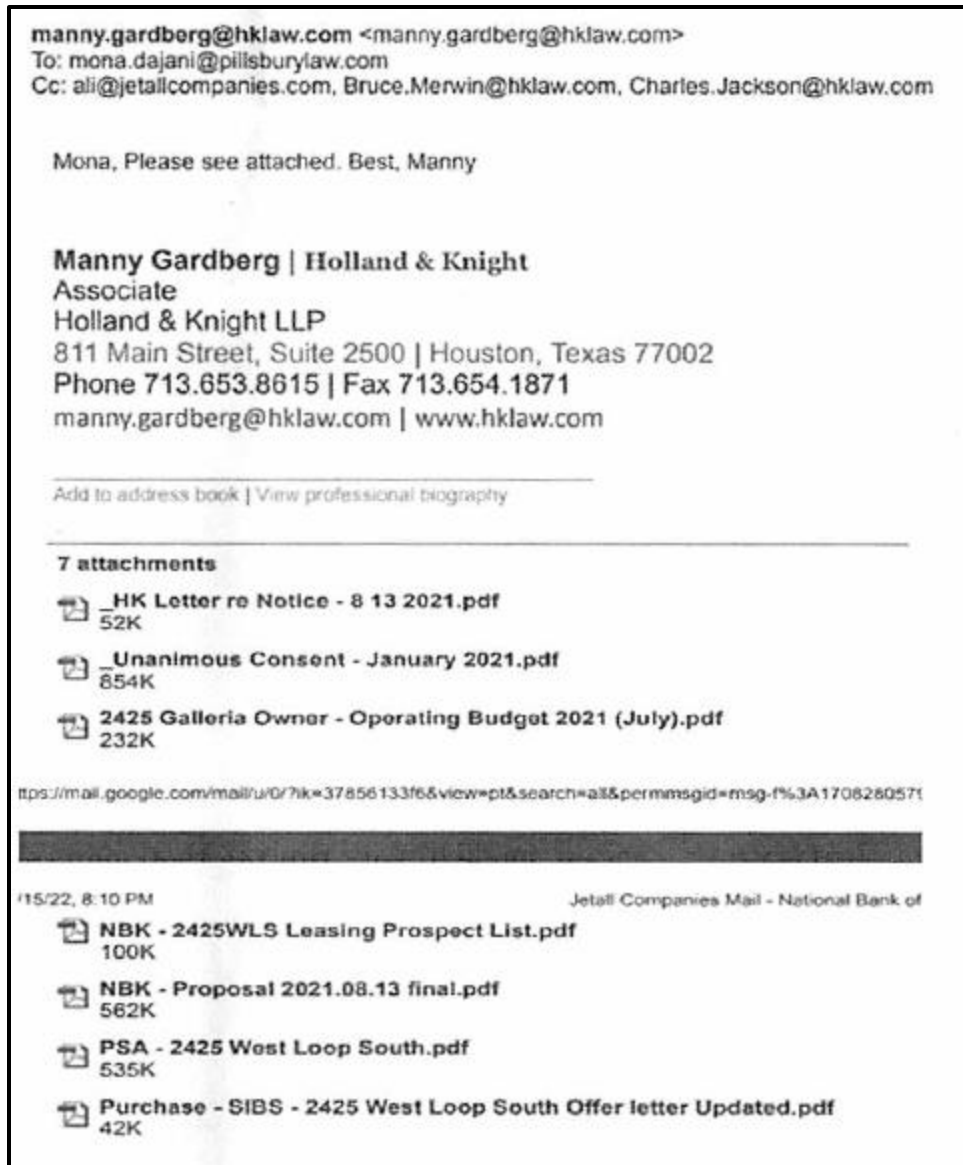
♦ **Walls Bank (existing tenant)**

- Renew 3,054 SF of rental space for 60-month term starting January 1, 2022.

♦ **Others (working directly with ownership)**

- ResMed (<https://www.resmed.com/en-us/>), interested in the entire building, working directly with Dr. Peter Farrell, Founder and Chairman
- Healthstore Holdings (<https://www.healthstore.com/>), interested in a 15-year term with 80,000 SF in phase 1 and 75,000 SF in 12 months as phase 2
- Immunicom (<https://immunicom.com/>), interested in at least two full floors, moving HQ from San Diego, CA

12. Reproduced below is an August 16, 2021 email from counsel for the Debtor to NBK forwarding multiple leases for approval that NBK had failed to approve or even respond to.



This lack of approval, or finding obstacles to approve, was not new. In September 2019, Related Group had reached out to lease the parking garage located at the 2425 Building to be used for overflow, for parking up to 110 spaces. NBK's authorized representative Michael Carter would not approve this lease (note "nbkny" email address below— *i.e.* National Bank of Kuwait, New York Branch), which would have generated a great deal of revenue for the Debtor.

**From:** Michael Carter <Michael.Carter@nbkny.com>

**Date:** Monday, 23 September 2019 at 13:22

**To:** Azeemeh Zaheer <azeemeh@naissancecapital.co.uk>, Lisa Walker <Lisa.Walker@nbkny.com>

**Subject:** RE: LOI

My primary concern is that the tenant determines when the commencement date is, presumably because they have zoning and building department approvals to complete as well as financing to arrange, which is understandable, however there does not appear to be an outside expiration date for the Commencement date. It appears they could tie up these space permanently without having to pay rent. I think you should have an outside date for Commencement.

13. The situation became so untenable that in September 2021, Debtor initiated a lawsuit against NBK.

14. In good faith, even during the pendency of this litigation, the Debtor was still trying to get tenants into the building and get NBK's approval to do so, so it would not claim additional breaches of loan agreements. On July 2, 2022, the Debtor sent NBK five leases for approval, which NBK did not approve.

15. The parties litigated for eleven (11) months until August 22, 2022, when they entered into a Confidential Settlement Agreement. The entire Confidential Settlement Agreement will be submitted to the Court *in camera* at the appropriate time, and the Debtor should be allowed to use it in this Adversary since the breach of that Settlement Agreement by NBK is not only actionable, but was also devastating to Debtor. Because NBK has a way of interpreting any action of the Debtor as one to breach or avoid some purported contractual obligation or other, when the reverse is entirely true, the Confidential Settlement Agreement has not been attached. NBK has prevented Debtor's successful performance under any and all agreements it has with NBK, including the Confidential Settlement Agreement.



16. The Confidential Settlement Agreement permitted a timeframe in which Debtor could sell the 2425 Building, and Debtor was successful in receiving a hard Letter of Intent dated January 17, 2023 to purchase the building from Caldwell Soames. A true and correct copy of that hard Letter of Intent is attached hereto as **Exhibit 2**. Again, while these negotiations were ongoing, NBK took actions which interfered with the continuation and closing of that transaction, including issuing a notice of foreclosure on March 29, 2023 in breach of the Confidential Settlement Agreement, which Debtor believes was done intentionally to prevent the sale. The sale would have cleared the Bank of Kuwait debt as it stood at that time and left great value for the other Plaintiffs. Debtor believes that Bank of Kuwait recognized that greater value and wanted to take it for itself by foreclosure in a “loan to own” gambit.

17. There are tremendous factual inaccuracies that NBK represents to courts and continues into these proceedings. For example, in its Motion to Dismiss the Debtor’s Bankruptcy, while it is absolutely true that temporary restraining orders were filed to attempt to prevent a foreclosure by NBK and its takeover of the 2425 Building, they were also **granted**. The facts presented that NBK had not allowed the Debtor to lease up the building to generate revenue and had killed two transactions that Debtor was working on that would have cleared NBK and left value for the Debtor and the other Plaintiffs.

18. Additionally, NBK posted for foreclosure in 2023 early, and against an extended grace period that a State Court had given Debtor, which chilled the bidding process and interest in the 2425 Building completely. No one wants to buy a building posted for foreclosure. Debtor believes that NBK knew this and did it on purpose to prevent the Debtor from successfully selling the property and paying off the loan, so NBK could foreclose and become the owner of the 2425 Building.

19. Not the least of the misstatements that NBK makes about the Debtor are those hard statements that the Debtor has not made any payments to NBK since March 6, 2021. This is stated both in paragraph 13 of NBK's Motion to Dismiss Debtor's Bankruptcy, and in NBK's Mr. Carter's Declaration (paragraph 8 of Declaration of Michael Carter).

20. The absolute opposite is true. Representatives of NBK have admitted in writing that the following substantial payments have been made to NBK well after March 6, 2021:

- a) \$801,509.42 paid by Debtor to NBK on August 27, 2022;
- b) \$80,000 paid by Debtor to NBK on April 18, 2023;
- c) \$80,000 paid by Debtor to NBK on May 10, 2023.

This is almost One Million Dollars (\$1,000,000) that not only does NBK not give credit to the Debtor for having made the payments, but again, it vilifies it, saying exactly the opposite that no payments (zero) have been made since March 6, 2021.

21. After NBK's disclosures of the situation created by the Confidential Settlement and the wrongful posting for foreclosure during an extension of that agreement, potential buyers of the property who would otherwise become good prospects to negotiate a sale with Debtor, became potential purchasers of the NBK Note and began negotiating with NBK. NBK materially breached the Confidential Settlement Agreement and interfered with these potential purchases and with these business relationships.

#### **IV. CAUSES OF ACTION**

##### **COUNT 1: BREACHES OF CONFIDENTIAL SETTLEMENT AGREEMENT**

22. Plaintiffs repeat and reallege the allegations set forth in all preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

23. Debtor and the other two Plaintiffs and Defendant reached a valid and enforceable agreement expressly set forth in the Confidential Settlement Agreement. Pursuant to the Confidential Settlement Agreement, Defendant agreed to keep the contents and terms of the parties' agreement completely confidential. Debtor dismissed its very good claims in the Lawsuit against Defendant in reliance upon Defendant's promises, including but not limited to, Defendant's promise to uphold the confidentiality obligations set forth in the Confidential Settlement Agreement.

24. Defendant breached the Confidential Settlement Agreement by disclosing its contents and terms to third parties in violation of the agreement's express confidentiality provisions. These disclosures prevented Debtor from closing on the sale of the 2425 Building and chilled the market for other buyers for Debtor's property. The same is true for NBK's wrongful, early filing of a notice of foreclosure on the 2425 Building, also in violation of the Confidential Settlement Agreement.

25. Debtor and all Plaintiffs hereby sue NBK for these breaches of the Confidential Settlement Agreement. The damages for these breaches are the amounts of money that the Debtor would have made from the contemplated transaction, which is in excess of Fifty Million Dollars (\$50,000,000).

## **COUNT 2: TORTIOUS INTERFERENCE WITH CONTRACT**

26. Plaintiffs repeat and reallege the allegations set forth in all preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

27. As alleged, NBK tortiously interfered with the SIBS International contract (**Exhibit 1**) and the Caldwell Soames Inc. contract (**Exhibit 2**), causing damages to the Debtor and the other two Plaintiffs in the net amounts of the contracts which, but for NBK's interference,

would have been paid to the Debtor and the other two Plaintiffs. These damages are excess of Fifty Million Dollars (\$50,000,000), for which the Debtor hereby sues NBK.

**COUNT 3: TORTIOUS INTERFERENCE WITH BUSINESS RELATIONS**

28. Plaintiffs repeat and reallege the allegations set forth in all preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

29. After NBK's disclosures of the situation created by the confidential settlement and the wrongful posting for foreclosure during a judicial extension of the grace period contained in that agreement, potential buyers of the property who would otherwise have become good prospects to negotiate a sale with Debtor, became instead potential purchasers from NBK of the NBK note and began contacting and negotiating or attempting to negotiate with NBK instead of the Debtor.

30. This interference by NBK damaged Debtor in amounts to be determined after discovery, but which exceed the minimum jurisdictional limits of this Honorable Court.

**COUNT 4: FRAUD AND FRAUDULENT INDUCEMENT/LENDER LIABILITY**

31. Plaintiffs repeat and reallege the allegations set forth in all preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

32. NBK never had any intention of living up to the Confidential Settlement Agreement. The Debtor was winning the lawsuit against NBK, so NBK induced the Debtor into dismissing its lawsuit and entering into the Confidential Settlement Agreement which NBK had no intention of living up to. This fraud works an estoppel against NBK (see Count 6, "ESTOPPEL"). Plaintiffs hereby sue NBK for the fraud and fraudulent inducement and alleges it constitutes the basis for an action for Lender Liability.

33. NBK knew at the time it entered into the Confidential Settlement Agreement it would deflect and tortiously interfere with the Debtor's attempts to sell the 2425 Building so NBK

would be able to foreclose on the building and take all of the value instead of just the value of the amounts otherwise owed at the time. The fraud, fraud in the inducement, lender liability, and subsequent interference for all of which Plaintiffs hereby sue NBK. These actions by NBK have damaged the Debtor and the other two Plaintiffs in an amount of at least Thirty Million Dollars (\$30,000,000).

#### **COUNT 5: FRAUDULENT CONVEYANCE**

34. Plaintiffs repeat and reallege the allegations set forth in all preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

35. The funds paid by the Debtor to NBK:

- a) \$801,509.42 paid Debtor to NBK on August 27, 2022;
- b) \$80,000 paid by Debtor to NBK on April 18, 2023; and
- c) \$80,000 paid by Debtor to NBK on May 10, 2023

were fraudulently induced by NBK and were payments for which the Debtor received nothing in return and constitute fraudulent conveyances in violation of U.S.C. § 544, 548, and 550 and TEX. BUS. & COMM. CODE §§ 24.001, *et seq.*, for which the Debtor hereby sues NBK to recover all such amounts.

#### **COUNT 6: ESTOPPEL**

36. Plaintiffs repeat and reallege the allegations set forth in all preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

37. NBK is estopped from claiming Debtor owes any more than the amount stated and agreed to in the Confidential Settlement Agreement because of its fraud and fraudulent inducement alleged previously.

### **COUNT 7: BUSINESS DISPARAGEMENT**

38. Plaintiffs repeat and reallege the allegations set forth in all preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

39. The posting of the 2425 Building during any negotiation periods and/or the extended grace period when actual buyers were moving toward concluding a deal and when other potential buyers were expressing interest in the 2425 Building, constituted business disparagement against the Debtor for which Debtor hereby sues NBK. The damages are the net amount of money the Debtor would have received in the sales had they occurred.

### **COUNT 8: BREACH OF GOOD FAITH AND FAIR DEALING**

40. Plaintiffs repeat and reallege the allegations set forth in all preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

41. Every contract has a duty of good faith and fair dealing engrafted upon it, especially in a lender/borrower relationship, and even more so when the lender is based in the State of New York as NBK is.

42. NBK breached its duty of good faith and fair dealing by:

- a) Inducing Plaintiffs to dismiss their State Court lawsuit;
- b) Inducing Plaintiffs to enter into the Confidential Settlement Agreement;
- c) Tortiously interfering with Debtor's performance under the Confidential Settlement Agreement;
- d) Tortiously interfering with third-party contracts;
- e) Not approving tenant leases or contracts for sale; and
- f) deflecting buyers so Debtor could not sell the 2425 Building.

43. Plaintiffs hereby sue NBK for breach of duty of good faith and fair dealing. The damages are for the value of the amounts that would have been recovered in the state court litigation and/or the value of the deals lost for leases and/or sales of the 2425 Building.

#### **COUNT 9: UNJUST ENRICHMENT**

44. Plaintiffs repeat and reallege the allegations set forth in all preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

45. If NBK is allowed to foreclose on the 2425 Building it will make an unconscionable profit and succeed in its “loan to own” gambit. The amount of its unjust enrichment for which Plaintiffs hereby sue NBK is the difference between what NBK would have been owed (but for its breaches of the Confidential Settlement Agreement) under the Confidential Settlement Agreement and the true value of the building, for which Plaintiffs hereby sue NBK.

#### **COUNT 10: ATTORNEYS’ FEES**

46. Plaintiffs repeat and reallege the allegations set forth in all preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

47. Plaintiffs hereby sue NBK for their reasonable and necessary attorneys’ fees under breach of contract and under any statutory or common law right to recover same.

#### **PRAYER**

WHEREFORE, premises considered, Plaintiffs pray that Defendants be cited to appear herein as provided by law and that upon hearing:

1. NBK not be allowed to foreclose on the 2425 Galleria Building;
2. Plaintiffs recover their damages and attorneys’ fees as alleged.

Dated: September 19, 2023

Respectfully submitted,

**HAYWARD PLLC**

By: /s/ Melissa S. Hayward

Melissa S. Hayward

Texas Bar No. 24044908

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**PROPOSED COUNSEL FOR THE DEBTOR**

By: /s/ James Q. Pope

James Q. Pope

State Bar No. 24048738

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(713) 449-4481 Telephone

(281) 657-9693 Facsimile

**COUNSEL FOR PLAINTIFFS ALI CHOUDHRI AND  
NAISSANCE GALLERIA LLC**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing was filed with the Court and served via the Court's CM/ECF system upon all of the parties registered to receive such notice on September 19, 2023.

/s/ Melissa S. Hayward

Melissa S. Hayward



## EXHIBIT 2

**CAUSE NO. 2023-22748**

GALLERIA 2425 OWNER, LLC,	§	IN THE DISTRICT COURT OF
	§	
<i>Plaintiff,</i>	§	
v.	§	HARRIS COUNTY, TEXAS
	§	
NATIONAL BANK OF KUWAIT,	§	
S.A.K.P., NEW YORK BRANCH,	§	
	§	
<i>Defendant.</i>	§	281ST JUDICIAL DISTRICT

**PLAINTIFF'S SIXTH AMENDED PETITION**

Galleria 2425 Owner, LLC ("*Plaintiff*") files this Sixth Amended Petition against Defendant National Bank of Kuwait S.A.K.P., New York Branch (individually as "*NBK*", or collectively as "*Defendants*"), and Azeemeh Zaheer (individually as "*Zaheer*", or collectively as "*Defendants*") and, in support, submit the following:

**I.**  
**DISCOVERY PLAN**

1. Discovery should be conducted pursuant to Level 2 of Rule 190.3 of the Texas Rules of Civil Procedure.

**II.**  
**PARTIES**

2. Galleria 2425 Owner, LLC ("*Plaintiff*") is a limited liability company doing business in Texas and is the owner of the building located at 2425 West Loop S., Houston, Texas ("*2425 Building*").

3. National Bank of Kuwait, S.A.K.P., New York Branch (“**NBK**”) is a banking corporation organized under the laws of Kuwait, acting through its New York Branch. NBK HAS APPEARED WITH COUNSEL.

4. Azeemeh Zaheer (“**Zaheer**”), is an individual who resides, and may be personally served at 5513 Kansas Street, Houston, Texas 77007.

### **III.** **INTRODUCTION**

5. This suit was originally filed against NBK, a party who has been shown to be willing to engage in bad faith actions, and who repeatedly attempts to make outside deals with third parties, specifically to deprive the plaintiff of its ownership interest in the 2425 Building in any way it can.

6. Plaintiff, Galleria 2425 Owner, LLC, filed bankruptcy to preserve the asset, which NBK vehemently opposed, and fought to have dismissed from the bankruptcy court. However, at the hearing on NBK’s motion to dismiss, Plaintiff was successful in defending against dismissal, and the bankruptcy case moved forward.

7. Plaintiff promptly proposed a plan in the bankruptcy court, which was characterized as a “really smart” plan that “check[ed] all the boxes” for plan confirmation, according to Judge Lopez.

8. Then, after NBK lost its motion to dismiss, it filed a letter in the bankruptcy case (Document 77) which made the bankruptcy court aware of litigation that was irrelevant to Galleria 2425 Owner, LLC’s pursuit of its ongoing bankruptcy case. The state court litigation referenced by NBK is, in the words of Judge Lopez “an unrelated case involving Ms. Zaire [sic] and Naissance and Mr. Choudhri”. The case is about a dispute over control of an entity called

Naissance Galleria, LLC, which is an entity that provided a mezzanine loan to Galleria 2425 Owner, LLC's sole member and is party to an intercreditor agreement with NBK. Upon information and belief, certain of the investors in Naissance Galleria LLC are substantial clients of or investors in NBK. Naissance Galleria LLC was also a party to the very settlement agreement with NBK at issue in this suit. Importantly, Naissance Galleria, LLC does not have any membership in, or control over Galleria 2425 Owner, LLC, or any of its members or managers.

9. Notably, the state court, in the litigation referenced in NBK's letter to Judge Lopez, did issue a Temporary Injunction, which maintained the status quo of Choudhri's management and control of Naissance Galleria, LLC, but limited any actions that could be taken by Choudhri on behalf of Naissance Galleria, LLC to only those which are also approved by Zaheer, until a trial resolves the issue once and for all.

10. After the Temporary Injunction was in place establishing Choudhri's control of Naissance Galleria, LLC, Zaheer directed her counsel, while purporting to act for Naissance Galleria, LLC, to appear at two separate hearings in the bankruptcy court, on or about October 12, 2023 and November 1, 2023, and on the eve of a November 1 status conference filed an emergency motion in the bankruptcy court, requesting for Judge Lopez to rule against the state court and find that Zaheer had control of, and could act for Naissance Galleria, LLC. Judge Lopez thereafter sua sponte dismissed the bankruptcy case during the November 1, 2023 status conference.

11. When the parties to the state court litigation returned to appear before Judge Manor on November 13, 2023, Judge Manor confirmed that her Temporary Injunction did not give Zaheer any right to act as the manager of Naissance Galleria, LLC, and confirmed that Choudhri was in control, subject to Zaheer's approval during the pendency of trial.

12. All of these actions, gave rise to Judge Lopez's serious concerns about the ability to move forward with the bankruptcy case without resolution in the state court action. Judge Lopez stated, in the Status Conference held on November 1, 2023, the following:

"I don't have anything to qualify it in state court issues. I don't know. There's just a lot of confusing stuff, and my gut tells me that I need to dismiss this case and let you all go figure this out in State Court, because there's not enough here, and there's real concerns that I have..."

13. However, since Naissance Galleria, LLC has no ownership or control over the Plaintiff or any of its members or managers, these filings and appearances are just a smoke screen. The fact that they were also filed in violation of the Temporary Injunction not only makes these actions unlawful, but there could be no other purpose aside from attempting to cause the dismissal of the bankruptcy case brought by Galleria 2425 Owner, LLC, which is an action that, logically, would be counter to the company's interests.

14. In its letter inviting the Naissance dispute and Ms. Zaheer's counsel into the bankruptcy proceedings, NBK cleverly attempts to confuse the court by implying that Ms. Zaheer had control of Naissance Galleria, LLC because the order says that management decisions could not be made without her approval. Ms. Zaheer's counsel then accepted NBK's invitation to create confusion and disruption, appearing at the October 13 emergency status conference purporting to represent Naissance Capital LLC.

15. As this Court has handled cases related to Galleria 2425 Owner, LLC for years, it is well aware that Ms. Zaheer has been entirely absent from any of these proceedings until on or about July 5<sup>th</sup>, 2023, when Naissance Galleria, LLC appeared, allegedly controlled by Azeemeh

Zaheer, before this Court's ancillary docket, attempting to stop the foreclosure by NBK, at which hearing this Court itself questioned the absence of Ms. Zaheer over the last several years.

16. Ms. Zaheer signed the assignment giving control over Naissance Galleria, LLC to Mr. Choudhri on July 3<sup>rd</sup>, 2020. Ms. Zaheer did not make any claims of control over Naissance Galleria, LLC, did not attempt to object to Mr. Choudhri's management of the company for three (3) years. These allegations are absurd, as Ms. Zaheer has been entirely absent from the company's management for years.

17. As a result of this conspiracy by the defendants, the emergency status conference requested by NBK resulted in the dismissal of the bankruptcy case.

18. What's interesting is that, if Ms. Zaheer was sincerely the manager of Naissance Galleria, LLC, she would not have worked to have the bankruptcy case dismissed.

19. Such actions, if they had been taken by a legitimate manager for Naissance Galleria, LLC, would be a breach of fiduciary duty to the company, unless there was a back room deal NBK.

20. Now that NBK has re-posted the 2425 Building for foreclosure, Plaintiff will suffer irreparable harm as a result of the defendants' actions.

#### **IV. FACTUAL BACKGROUND**

21. In 2018, NBK loaned certain funds to Plaintiff. NBK has continually interfered with the Plaintiff's ability to lease the 2425 Building to produce revenue and Plaintiff's ability to sell the 2425 Building to pay NBK off. Every time NBK has so interfered, it has then blamed the Plaintiff for its inability supposedly to meet some of the loan terms.

22. For example, in January 2021, Plaintiff Ali Choudhri, who is vilified by NBK in various pleadings, had serious parties interested in acquiring interests in the building more than enough to clear NBK's debt. A letter dated January 15, 2021, from SIBS International, and two purchase contracts would have paid off not only NBK, but left the Plaintiff with a great deal of value. **NBK, rather than facilitate this sale, issued a formal notice of default to the Plaintiff and its intent to accelerate the loan on June 29, 2021,** while the SIBS International deal was in progress, killing that deal.

23. **The same was true with regard to NBK's interference with the Plaintiff's attempt to lease space in the building to provide revenue so it could operate and make loan payments.** By August 2021, this situation had become untenable due to NBK's refusal to approve new tenants and new leases, prompting the Plaintiff, on August 13, 2021, to send NBK a detailed letter regarding lease-up and renewal prospects for discussions, none of which, it seemed NBK would approve.

♦ **Healthcare Service Organization**

- •Size: 130,000+ RSF – large client requirement in their preliminary planning stages: •Industry: Healthcare Service Organization •Type of use: Administration Offices •Direct/Sublease •Commencement date: Q3/2023 •Term:5-10 yrs. They are specifically VERY interested in amenities available, for example: deli, gym, day care, conference center (# of seats), training center (# of seats).

♦ **Invesco**

- We met with the team twice and are actively pursuing them for 2425. They are interested in a 157-month lease term for 208,830 SF of Net Rental Area.

♦ **Financial Services Firm**

- Office •AREA: West Houston (610 West, Hwy 290, Beltway 8) •SPACE: Open Concept •SIZE: Approximately 20,000 – 25,000 rsf •PARKING: 5/1000 ratio •OCCUPANCY: Late 2Q22/Early3Q22 •TERM: 36-60 months with

renewal options •This tenant is currently at 24 Greenway on their top floor and have been looking at other A buildings.

- ♦ **Beyond Finance**

- We are discussing a 68-month lease term for +/- 40,000 rentable SF.

- ♦ **Banco Affirme**

- We submitted a 64-month lease term for 4,545 SF of Net Rental Area.

- ♦ **Walls Bank (existing tenant)**

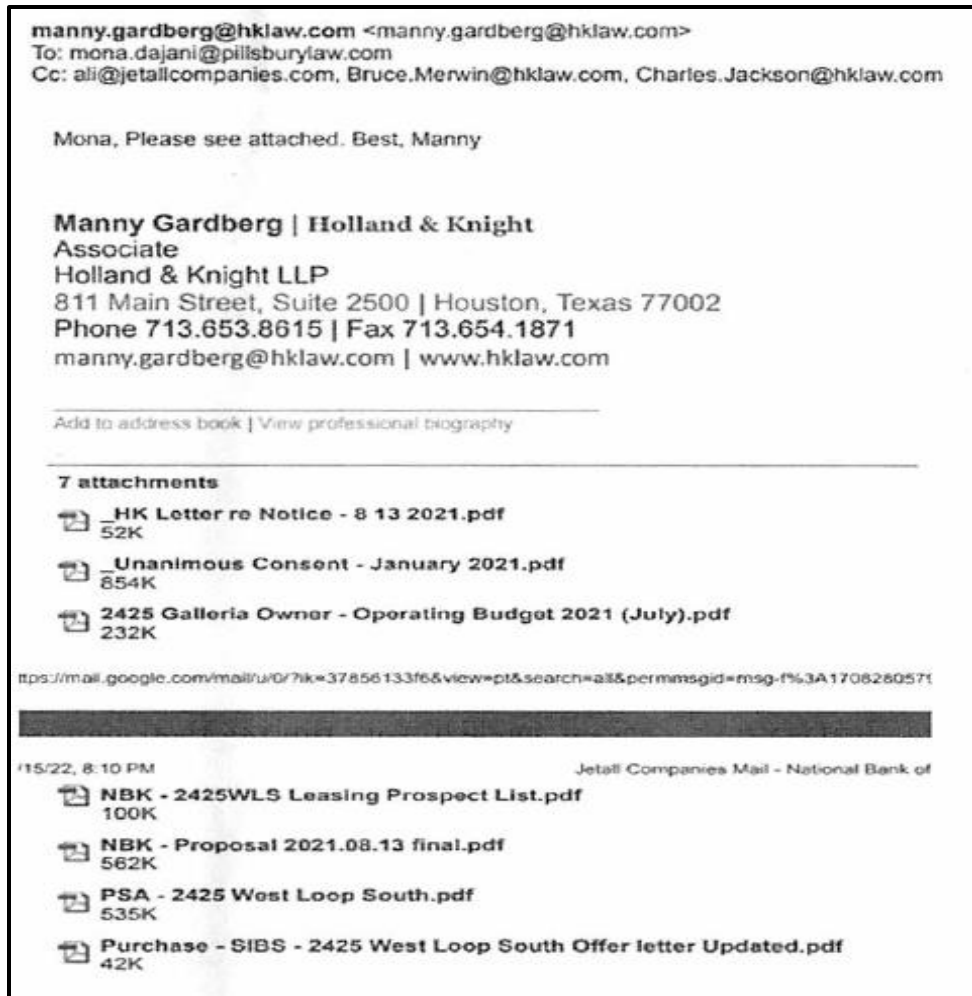
- Renew 3,054 SF of rental space for 60-month term starting January 1, 2022.

- ♦ **Others (working directly with ownership)**

- ResMed (<https://www.resmed.com/en-us/>), interested in the entire building, working directly with Dr. Peter Farrell, Founder and Chairman
  - Healthstore Holdings (<https://www.healthstore.com/>), interested in a 15-year term with 80,000 SF in phase 1 and 75,000 SF in 12 months as phase 2.
  - Immunicom (<https://immunicom.com/>), interested in at least two full floors, moving HQ from San Diego, CA

24. Below is an August 16, 2021 email from counsel for the Plaintiff to NBK forwarding multiple leases for approval that **NBK had failed to approve or even respond to.**





25. This lack of approval, or finding obstacles to approve, was not new. In September 2019, Related Group had reached out to lease the parking garage located at the 2425 Building to be used for overflow, for parking up to 110 spaces. **NBK's authorized representative Michael Carter would not approve this lease** (note "nbkny" email address below— *i.e.* National Bank of Kuwait, New York Branch), which would have generated a great deal of revenue for the Plaintiff.

**From:** Michael Carter <Michael.Carter@nbkny.com>

**Date:** Monday, 23 September 2019 at 13:22

**To:** Azeemeh Zaheer <azeemeh@naissancecapital.co.uk>, Lisa Walker <Lisa.Walker@nbkny.com>

**Subject:** RE: LOI

My primary concern is that the tenant determines when the commencement date is, presumably because they have zoning and building department approvals to complete as well as financing to arrange, which is understandable, however there does not appear to be an outside expiration date for the Commencement date. It appears they could tie up these space permanently without having to pay rent. I think you should have an outside date for Commencement.

26. The situation became so untenable that in September 2021, Plaintiff initiated a lawsuit against NBK.

27. In good faith, even during the pendency of this litigation, the Plaintiff was still trying to get tenants into the building and get NBK's approval to do so, so it would not claim additional breaches of loan agreements. **On July 2, 2022, the Plaintiff sent NBK five leases for approval, which NBK did not approve.**

28. *The parties litigated for eleven (11) months until August 22, 2022, when they entered into a Confidential Settlement Agreement.* **NBK has prevented Plaintiff's successful performance under any and all agreements it has with NBK, including the Confidential Settlement Agreement.**

29. The Confidential Settlement Agreement permitted a timeframe in which Plaintiff could sell the 2425 Building, or seek refinancing, and Plaintiff was successful in obtaining a buyer for the building. Upon closing this transaction, Plaintiff would have retained a forty-five (45%) ownership interest in the 2425 Building. However, **NBK again took actions which interfered with the continuation and closing of that transaction, including issuing a notice of foreclosure**

**on March 29, 2023 in breach of the Confidential Settlement Agreement, which Plaintiff believes was done intentionally to prevent the sale.** The sale would have cleared the NBK debt as it stood at that time and left great value for the Plaintiff. Plaintiff believes that NBK recognized that greater value and wanted to take it for itself by foreclosure in a “loan to own” gambit.

30. There are tremendous factual inaccuracies that NBK represents to state and federal courts and they continue into these proceedings. For example, in its Motion to Dismiss the Plaintiff’s Bankruptcy, while it is absolutely true that temporary restraining orders were filed to attempt to prevent a foreclosure by NBK and its takeover of the 2425 Building, NBK fails to note that such requests were also **granted by this Court** based upon showings that **NBK had not allowed the Plaintiff to lease up the building to generate revenue, and had killed at least two transactions that Plaintiff was working on that would have cleared NBK and left value for the Plaintiff.**

31. Additionally, NBK posted for foreclosure in 2023 early, and against an extended grace period that this Court had given Plaintiff, which silenced the bidding process and interest in the 2425 Building completely. No one wants to buy a building posted for foreclosure. **Plaintiff believes that NBK knew this and did it on purpose to prevent the Plaintiff from successfully selling the property and paying off the loan, so NBK could foreclose and take the 2425 Building for itself so it can open a Houston location.**

32. After NBK’s disclosures of the situation created by the Confidential Settlement and the wrongful posting for foreclosure during an extension of that agreement, potential buyers of the property who would otherwise become good prospects to negotiate a sale with Plaintiff, became potential purchasers of the NBK Note and began negotiating with NBK. NBK interfered with

these potential purchases and with these business relationships. At least the following were interfered with in this fashion:

- a) Globix Investment,
- b) Ironwood Commercial Realty,
- c) Shah Firm, LLC, and
- d) Jeb Brown Law.

**B. Azeemeh Zaheer Decides She Wants the Building.**

33. On June 26, 2023, Zaheer, filed a lawsuit in the name of Naissance Galleria, LLC (“*Naissance*”), despite having assigned control over such entity several years prior., in the 157<sup>th</sup> Judicial District Court in Harris County, Texas referenced by case number 2023-39006 against Brad Parker (“*Parker*”) as an initial step in Zaheer’s pursuit of a hostile takeover of the 2425 Building.

34. On July 5, 2023, Zaheer, again acting in the name of Naissance, filed a second lawsuit in the 129<sup>th</sup> Judicial District Court in Harris County, Texas referenced by case number 2023-41091 against Parker and NBK, to further her hostile takeover attempt of the 2425 Building. Zaheer sought injunctive relief, but that request for an emergency temporary restraining order was denied.

35. On or about July 5, 2023, Plaintiff commenced a Chapter 11 bankruptcy proceeding in the Southern District of Texas, referenced by case number 23-60036. NBK sought to dismiss the bankruptcy proceeding, but after a full day evidentiary hearing its motion to dismiss was denied on September 26, 2023. The Chapter 11 Plan could have been approved and would have substantially reduced the value of NBK’s secured debt. So, after its motion to dismiss was denied,

NBK changed tactics and decided to invite Ms. Zaheer and her counsel into the bankruptcy case to cause confusion and disruption. NBK decided it could not allow its debt to be restructured under the bankruptcy code, just as it had decided it could not allow the prior sales of the building that had been lined up by Plaintiff.

**C. Azeemeh Zaheer is a False Representative of Naissance.**

36. Azeemeh Zaheer at one time had a business and personal relationship with Ali Choudhri, both of which appeared to have ended mutually for a time. Azeemeh Zaheer sought injunctive relief in the 80th Judicial District Court for Harris County against Naissance Galleria, LLC, which was a mezzanine lender to an LLC (“*LLC*”) two steps up in the chain.

37. Azeemeh Zaheer had signed, as the authorized representative of the Managing Member of Naissance Galleria, LLC an Assignment of the management rights of that LLC to Ali Choudhri. In response, Mr. Choudhri stepped into Naissance’s shoes, covered its expenses, and did a miraculous job of negotiating the aforementioned settlement with NBK after the Assignment. Azeemeh Zaheer made this assignment for a number of reasons, but most of them stemmed from her ineffective management of the building and her fear of exposure to NBK and certain individuals affiliated with NBK because of her poor performance.

38. After Mr. Choudhri received the Assignment and had negotiated the successful settlement with NBK and the building looked as if it might succeed (a period of years), Azeemeh Zaheer decided she wanted to misappropriate the value that Mr. Choudhri had just preserved and to an extent had just created. First, she claimed the Assignment was invalid and sought and received a Temporary Injunction, on September 21, 2023, from the 80th Judicial District Court in Harris County. This Temporary Injunction basically only created a stalemate with respect to the management of Naissance Galleria, LLC to preserve the status quo until a trial in January. Mr.

Choudhri is still the manager of Naissance Galleria, LLC, not Azeemeh Zaheer, although she did have some approval rights under the injunction. Mr. Choudhri, as the manager of Naissance Galleria LLC and is only required to obtain approval from Zaheer for his actions. Zaheer DOES NOT have any control of the entity. Moreover, this was confirmed at a hearing on November 13, 2023 before Judge Manor in the 80<sup>th</sup> Judicial District Court.

**D. Azeemeh Decides to Conspire with NBK So It Could Foreclose On the Building.**

39. After the September 21, 2023 entry of the Temporary Injunction, some ironic, if not strange, events start taking place with respect to Ms. Zaheer and the Plaintiff. First, it is against Azeemeh Zaheer and Naissance's financial interests if NBK forecloses.

40. Second, on information and belief, Zaheer caused a copy of the Temporary Injunction Entered on September 21, 2023 by the 80th Judicial District Court in Harris County to be sent to counsel for NBK, who used it to interfere with the Plaintiff's ability to reorganize under the bankruptcy code and confirm a chapter 11 plan.

41. Third, Zaheer's directed her counsel to appear without any forewarning at the October 12, 2023 status conference, in the Bankruptcy Court about the plan, claiming Azeemeh Zaheer now is the manager of Naissance Galleria, LLC and they have been hired by her to represent Naissance Galleria, LLC, all by virtue of the Temporary Injunction.

6	MR. DRINNON: Okay. I represent Mr. Abdullatif in	
7	other cases but not this one. I tend to get hired because I	
8	have sued Mr. Choudhri successfully in numerous	
9	jurisdictions and cases . . . .	

**E. Zaheer Changes Sides to Make a Deal with the NBK**

42. Progressively, Azeemeh Zaheer's behavior becomes more inexplicable as she: (1) takes the position that the Temporary Injunction put her in charge of Naissance (it did not);<sup>1</sup> (2) that Naissance Galleria, LLC could or had already become the owner of the Debtor building (2425 Galleria Owner, LLC, Plaintiff herein) and as the new owner, they did not wish to pursue claims asserted in the bankruptcy case against NBK by Plaintiff and Naissance for breaching the settlement agreement and would want to take the bankruptcy in another direction.

43. This created an environment of confusion for the Bankruptcy Court, which was by Defendants' design, and it was a concerted effort by the Defendants to have the bankruptcy case dismissed, allowing NBK to foreclose. Defendant NBK would not be impeded by the bankruptcy and Zaheer could tell Mr. Choudhri: "I will not go along with your reorganization plan unless you pay me millions of dollars" while making a deal with NBK to block the Plan of Reorganization in the event no payment was received from Mr. Choudhri.

44. The Defendants are working in concert, to achieve the same end. Specifically, the Defendants have devised, and intended to devise, a scheme or artifice to seize the 2425 Building by any means necessary. Defendants will stop at nothing to see the Plaintiff lose possession of the 2425 Building, and upon information and belief, the driving force behind their efforts is Osama Abdullatif ("***Abdullatif***").

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<sup>1</sup> At a hearing had in the issuing court (the 80th Judicial District Court) on Monday, November 13, 2023, the Court confirmed her Temporary Injunction Order had not turned control of Naissance over to Zaheer and Zaheer had no authority to authorize attorneys to make the filing and take the action they had on behalf of Naissance Galleria, LLC in the Bankruptcy.

45. Defendants' scheme has involved false representations of material information, including but not limited to misrepresentations concerning the Plaintiff and the purpose and effects of the Temporary Injunction.

46. On November 29, 2023, Azeemeh appeared, through counsel, at an emergency hearing where Naissance Galleria, LLC's Application for Temporary Restraining Order was being heard before the Harris County District Court Ancillary Judge. Naissance Galleria, LLC sought an emergency temporary restraining order, to enjoin NBK from proceeding with the foreclosure sale scheduled for December 5, 2023, in an effort to protect its interests in the 2425 Building. However, Azeemeh, through counsel, argued against entry of the temporary restraining order, and worked alongside NBK to ensure its denial, leaving the 2425 Building subject to foreclosure. Azeemeh's stance is bizarre, considering Azeemeh, improperly acting as manager for Naissance Galleria, LLC, sought an emergency temporary restraining order to stop NBK from foreclosing on the 2425 Building in July 2023<sup>2</sup>.

**F. False Representations by Zaheer's Agents are Successful in Getting Plaintiff's Bankruptcy Dismissed.**

47. The Bankruptcy Court scheduled a Status Conference for the Plaintiff's Bankruptcy Case for November 1, 2023. Azeemeh's agents, on October 31, 2023, only hours before the Status Conference, filed an Emergency Motion. This Motion contained many misrepresentations, some of which follow:

- a) Even though Zaheer had no right to or standing necessary to file anything on behalf of Naissance, and the Temporary Injunction gave Zaheer no such rights, statements were made in their Emergency Motion directly to the contrary, stating Azeemeh Zaheer was in, Choudhri was out.

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<sup>2</sup> See Cause No. 2023-41091: Naissance Galleria LLC v. National Bank of Kuwait S.A.K.P., New York Branch, transcript from the July 5, 2023 Temporary Restraining Order hearing is attached.



- b) The filing stated flatly at one point that the Assignment had been found to be forged – it had not.
- c) The filing stated that, because of the Temporary Injunction, Naissance was now controlled exclusively by Zaheer, who could make Naissance become the Owner of the Bankrupt. (The issuing court on Monday, November 13, 2023, ruled from the bench it said no such thing.)

These misrepresentations had the desired effect, and the Bankruptcy Court dismissed the Bankruptcy, green-lighting NBK to foreclose.

**G. Abdullatif is Choudhri's Competitor and Wants to Ruin Him.**

48. Choudhri has been in the real estate investment and management business for the last 20 years. The regular course of Choudhri's business involves numerous aspects of real estate development. These activities include real estate and business acquisitions and dispositions, seeking and obtaining financing, and developing and managing commercial and residential properties. He regularly raises capital for these activities through the issuance of equity and/or debt. It is also within his normal course of business to enter into transactions with borrowers, lenders, and investors to support the purchase, development, and operations of real estate properties.

49. Choudhri at times conducts his real estate investment and management business through the use of special purpose entities, such as Plaintiff Galleria Owner 2425, LLC. Choudhri runs a management company, Jetall ("*Jetall*"), to provide employees and management services to entities for purposes of operating real estate investments.

50. Abdullatif has provided financing for numerous third-party claims against Choudhri, including interfering with Choudhri's final divorce proceedings in both Pakistan Supreme Court and Harris County District Court by soliciting Choudhri's ex-wife for her legal claims against Choudhri and/or his entities and to gain access to Choudhri's protected financial

disclosures. Abdullatif has filed several dozen Lis Pendens against Choudhri, and his properties, and has sponsored litigation against Choudhri in several dozen cases.

51. Upon information and belief, Abdullatif is also financing the litigation expenses of Zaheer against Choudhri in the dispute over the building owned by Plaintiff. Abdullatif, Zaheer, and others have all agreed to the enterprise course of action aimed at destroying Choudhri's business, including taking possession of the 2425 Building.

52. On more than one occasion, Abdullatif resorted to violence and threats against Choudhri and/or his family, friends, and associates. Mr. Choudhri had another real estate venture involving an entity called Dalio. Abdullatif was present at Dalio's foreclosure proceeding, where a friend accompanying him assaulted one of Choudhri's lawyers. On another occasion, Abdullatif and his associates used firearms to hold Choudhri, and his associates, hostage.

53. Abdullatif also formed an association with others in his illegal efforts to destroy Choudhri's business. These individuals include but are not limited to Chris Wyatt, former paralegal of Jetall ("**Wyatt**").

54. Wyatt was hired by Jetall in 2019. In the course of his employment, Wyatt oversaw legal and litigation matters for Jetall. He was provided confidential information concerning Jetall's and its client's real estate transactions, finances and debt leverage on properties, and litigation management strategies. As a Jetall representative, Wyatt was regularly involved in and provided access to privileged information and communications, including information subject to attorney-client and work product privileges. Wyatt signed a non-disclosure agreement at the beginning of his employment prohibiting him from disclosing confidential information and requiring him to return all files upon his termination.

55. Wyatt's employment at Jetall ended in December 2020. When he left Jetall, Wyatt stole corporate files including electronic communications and secretly recorded privileged phone communications between Choudhri and his attorneys.

56. Jetall obtained a restraining order in January 2021 enjoining Wyatt from disclosing or divulging confidential information obtained through his course of employment with Jetall.

57. Abdullatif met with Wyatt before, during and after Wyatt's departure from Jetall. Abdullatif, directly and through his lawyers, received confidential and privileged information from Wyatt. This information included but is not limited to illegal recordings of Choudhri's conversations with attorneys.

58. Upon information and belief, Abdullatif and his lawyers were aware that Wyatt was a former employee of Jetall who was involved in confidential and privileged communications and that a restraining order was entered enjoining Wyatt from disclosing confidential information.

59. Abdullatif and his agents have used the illegally obtained information and recordings as part of Abdullatif's scheme to destroy Choudhri's business. Abdullatif retained Wayne Dolcefino ("***Dolcefino***") as a "consultant" to publish on the internet a series of hit pieces on Choudhri. Dolcefino advertises that his services included "litigation support," and Abdullatif has utilized Dolcefino in the course of his numerous lawsuits asserted against Choudhri and his businesses.

60. Information illegally obtained from Wyatt is included in many of Dolcefino's hit pieces. Dolcefino continues to publish these hit pieces on the internet, including videos posted in May 2023.

61. Abdullatif has made several false claims against his competitor, Choudhri, in many ways, two of the most egregious being:

- a) Hiring Dolcefino to create video “hit pieces” about Choudhri, his business, his marital status, and inappropriate character based upon his actions during that marital status. This video contained “over the top” falsehoods, e.g. that he was still married and had been for years. It was commercial speech designed to designate a competitor (Choudhri) and give Abdullatif a competitive advantage, and was introduced into interstate commerce by release to major television (broadcast and cable) networks and by placing on the internet where it still resides today, making it available to the potential customers and lenders that are competed for; and
- b) Placing multiple improper Lis Pendens on the record title to properties owned by Choudhri or his business entities, which created a double negative effect on Choudhri’s ability to conduct business by hampering his ability to find new lenders or renewing existing loans because the security for them was impaired and making it impossible to sell those properties to raise new capital on his own. These Lis Pendens were “over the top” misrepresentations because they were illegal and did not assert valid interests in the subject properties. The Lis Pendens were also introduced into interstate commerce because they were filed of record and were available “online” over the internet to any potential customer for commercial real estate in the Houston area.

## V.

### **CAUSES OF ACTION**

#### **COUNT 1: BREACHES OF CONFIDENTIAL SETTLEMENT AGREEMENT**

62. Plaintiff repeats and realleges the allegations set forth in all preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

63. Plaintiff and NBK reached a valid and enforceable agreement expressly set forth in the Confidential Settlement Agreement. Pursuant to the Confidential Settlement Agreement, NBK agreed to keep the contents and terms of the parties’ agreement completely confidential. Plaintiff dismissed its very good claims in the Lawsuit against NBK in reliance upon NBK’s promise to uphold the confidentiality obligations set forth in the Confidential Settlement Agreement.

64. NBK breached the Confidential Settlement Agreement by disclosing its contents and terms to third parties in violation of the agreement’s express confidentiality provisions. These

disclosures prevented Plaintiff from closing on the sale of the 2425 Building and chilled the market for other buyers for Plaintiff's property. The same is true for NBK's wrongful, early filing of a notice of foreclosure on the 2425 Building, also in violation of the Confidential Settlement Agreement.

65. Plaintiff hereby sues NBK for these breaches of the Confidential Settlement Agreement, including monetary damages for such breaches and injunctive relief preventing NBK from foreclosing on the building because Civil Practices & Remedies Code Section 65.011 authorizes injunction relief when: 1) the applicant is entitled to a writ of injunction under the principles of equity and the laws of Texas relating to injunctions. Texas Civil Practices & Remedies Code Section 65.011(3); See *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 210 (Tex. 20002); and 2) when irreparable injury to real or personal is threatened, irrespective of any remedy of law. Tex. Civ. Practice & Remedies Code Section 65.011(5).

66. Plaintiff requests injunctive relief as allowed pursuant to *CytoGenix, Inc. v. Waldroff*, 213 S.W.3d 479, 487 (Tex.App.—Houston, [1<sup>st</sup> Dist.] 2006, pet. denied), and *L Series, L.L.C. v. Holt*, 571 S.W.3d 864, 876 (Tex.App.—Fort Worth 2019, pet. denied) due to Defendant's breach.

## **COUNT 2: TORTIOUS INTERFERENCE WITH CONTRACT**

67. Plaintiff repeats and realleges the allegations set forth in all preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

68. As alleged, NBK tortiously interfered with the SIBS International contract and the Caldwell Soames Inc. contract, causing damages to the Plaintiff in the net amounts of the contracts which, but for NBK's interference, would have been paid to the Plaintiff.

69. Zaheer has tortiously interfered with Plaintiff's contract with NBK, and abused process by interfering in Plaintiff's bankruptcy proceeding.

**COUNT 3: TORTIOUS INTERFERENCE WITH PROSPECTIVE RELATIONS**

70. Plaintiff repeats and realleges the allegations set forth in all preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

71. After NBK's disclosures of the situation created by the confidential settlement and the wrongful posting for foreclosure during a judicial extension of the grace period contained in that agreement, potential buyers of the property who would otherwise have become good prospects to negotiate a sale with Plaintiff, became instead potential purchasers from NBK of the NBK note and began contacting and negotiating or attempting to negotiate with NBK instead of the Plaintiff. NBK interfered with these potential purchasers and with these potential business relationships. At least the following were interfered with in this fashion:

- a) Globix Investment,
- b) Ironwood Commercial Realty,
- c) Shah Firm, LLC, and
- d) Jeb Brown Law.

72. Zaheer have interfered with the Plaintiff's relationship with NBK and/or entered into a relationship with Zaheer and their antics caused the dismissal of Plaintiff's Chapter 11 bankruptcy proceeding, which was otherwise proceeding to a cram-down restructuring under Chapter 11 of the bankruptcy code

73. This interference by the Defendants damaged Plaintiff in amounts to be determined after discovery, but which exceed the minimum jurisdictional limits of this Honorable Court.

**COUNT 4: COMMON LAW FRAUD/LENDER LIABILITY**

74. Plaintiff repeats and realleges the allegations set forth in all preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

75. NBK never had any intention of living up to the Confidential Settlement Agreement. The Plaintiff was winning the lawsuit against NBK, so NBK induced the Plaintiff into dismissing its lawsuit and entering into the Confidential Settlement Agreement which NBK had no intention of living up to. This fraud works an estoppel against NBK (see Count 6, “ESTOPPEL”). Plaintiff hereby sues NBK for fraud and fraudulent inducement and alleges it constitutes the basis for an action for Lender Liability.

76. NBK knew at the time it entered into the Confidential Settlement Agreement it would deflect and tortiously interfere with the Plaintiff’s attempts to sell the 2425 Building so NBK would be able to foreclose on the building and take all of the value instead of just the value of the amounts otherwise owed at the time. Plaintiff accordingly sues NBK for its fraud, fraud in the inducement, lender liability, and subsequent interference with the settlement agreement. Plaintiff seeks benefit of the bargain damages for the fraud related to the enforceable contract. Plaintiff requests injunctive relief as allowed pursuant to *CytoGenix, Inc. v. Waldroff*, 213 S.W.3d 479, 487 (Tex.App.—Houston, [1<sup>st</sup> Dist.] 2006, pet. denied), and *L Series, L.L.C. v. Holt*, 571 S.W.3d 864, 876 (Tex.App.—Fort Worth 2019, pet. denied) due to Defendant’s breach.

**COUNT 5: FRAUDULENT TRANSFER**

77. Plaintiff repeats and realleges the allegations set forth in all preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

78. The funds paid by the Plaintiff to NBK:

a) \$801,509.42 paid Plaintiff to NBK on August 27, 2022;

- b) \$80,000 paid by Plaintiff to NBK on April 18, 2023; and
- c) \$80,000 paid by Plaintiff to NBK on May 10, 2023

were fraudulently induced by NBK and were payments for which the Plaintiff received nothing in return and constitute fraudulent conveyances in violation of U.S.C. § 544, 548, and 550 and TEX. BUS. & COMM. CODE §§ 24.001, *et seq.*, for which the Plaintiff hereby sues NBK to recover all such amounts. In addition, the Loan Agreement between NBK and Plaintiff set aside reserve funds to cover certain events of default related to the anchor tenant. Due to COVID-19, this provision of the Loan Agreement activated, and Plaintiff's loan payments were being drawn down from the reserve funds. However, NBK intentionally depleted Plaintiff's reserve funds, and transferred Plaintiff's funds to itself prior to the time when they were actually due. Plaintiff requests an injunction pursuant to Sec. 24.008.

#### **COUNT 6: ESTOPPEL**

79. Plaintiff repeats and realleges the allegations set forth in all preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

80. NBK is estopped from claiming Plaintiff owes any more than the amount stated and agreed to in the Confidential Settlement Agreement because of its fraud and fraudulent inducement alleged previously.

#### **COUNT 7: BUSINESS DISPARAGEMENT**

81. Plaintiff repeats and realleges the allegations set forth in all preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

82. The posting of the 2425 Building during any negotiation periods and/or the extended grace period when actual buyers were moving toward concluding a deal and when other



potential buyers were expressing interest in the 2425 Building, constituted business disparagement against the Plaintiff for which Plaintiff hereby sues NBK.

83. The efforts of Zaheer to make false accusations and representations about the Plaintiff's ownership interests, management, and decision-making abilities constituted business disparagement against the Plaintiff for which the Plaintiff hereby sues Zaheer.

84. The business disparagement by the Defendants damaged Plaintiff in amounts to be determined after discovery, but which exceed the minimum jurisdictional limits of this Honorable Court.

**COUNT 8: BREACH OF GOOD FAITH AND FAIR DEALING**

85. Plaintiff repeats and realleges the allegations set forth in all preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

86. Every contract has a duty of good faith and fair dealing engrafted upon it, especially in a lender/borrower relationship, and even more so when the lender is based in the State of New York as NBK is.

87. NBK breached its duty of good faith and fair dealing by:

- a) Inducing Plaintiff to dismiss their State Court lawsuit;
- b) Inducing Plaintiff to enter into the Confidential Settlement Agreement;
- c) Tortiously interfering with Plaintiff's performance under the Confidential Settlement Agreement;
- d) Tortiously interfering with third-party contracts;
- e) Not approving tenant leases or contracts for sale; and
- f) deflecting buyers so Plaintiff could not sell the 2425 Building.

88. Plaintiff hereby sues NBK for breach of duty of good faith and fair dealing. The damages are for the value of the amounts that would have been recovered in the state court litigation and/or the value of the deals lost for leases and/or sales of the 2425 Building.

**COUNT 9: UNJUST ENRICHMENT**

89. Plaintiff repeats and realleges the allegations set forth in all preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

90. If NBK is allowed to foreclose on the 2425 Building it will make an unconscionable profit and succeed in its “loan to own” gambit. The amount of its unjust enrichment for which Plaintiff hereby sues NBK is the difference between what NBK would have been owed (but for its breaches of the Confidential Settlement Agreement) under the Confidential Settlement Agreement and the true value of the building, for which Plaintiff hereby sue NBK.

**COUNT 10: CONSPIRACY**

91. Plaintiff repeats and realleges the allegations set forth in all preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

92. Defendants agreed to work in concert with each other in order to interfere with Plaintiff’s bankruptcy case, and to have it dismissed by making fraudulently claiming Azeemeh had control over Naissance Galleria, LLC.

93. Defendants acted with the intent to harm plaintiff by disrupting its bankruptcy proceedings and ultimately obtaining a sua-sponte dismissal of such proceeding based upon their allegations

94. To accomplish the object of their agreement Defendants intentionally or negligently mischaracterized the effect of the state court temporary injunction, in order to confuse and disrupt Plaintiff’s bankruptcy case, which resulted in dismissal.

95. The agreement to engage in this conduct proximately caused injury to plaintiff. Plaintiff's sole asset and its ability to reorganize its affairs under Chapter 11 of the bankruptcy code, has now been posted for foreclosure on December 5<sup>th</sup>, 2023, instead of being protected through its reorganization proceedings. A foreclosure will irreparably harm Plaintiff.

**COUNT 11: FEDERAL MISREPRESENTATION OF SERVICES AND UNFAIR  
COMPETITION UNDER THE LANHAM ACT**

96. Plaintiff repeats and realleges the allegations set forth in all preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

97. Section 43 of the Lanham Act provides civil relief to any person damaged by the acts of another with connection to "any goods or services," who uses any "false designation of origin, false, or misleading description of fact, or false or misleading representation of fact" that either is either "likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person," or "in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities." 41 U.S.C. § 1125(a)(1).

98. To establish a prima facie claim under § 43 of the Lanham Act of 1946, a plaintiff must establish that: (1) the defendant made a "false or misleading statement of fact," (2) the statement "either deceived or had the capacity to deceive a substantial segment of potential consumers," (3) the deception was "material, in that it is likely to influence the consumer's purchasing decision," (4) the goods, services, or commercial activities must be "in interstate commerce," and finally, (5) "as a result of the statement at issue," there was injury to the plaintiff

or the plaintiff “is likely to be injured.” *IQ Prod. Co. v. Pennzoil Prod. Co.*, 305 F.3d 368, 375 (5th Cir. 2002).

99. NBK and the Plaintiff entered into a settlement agreement in the spring of 2023. The settlement agreement was confidential. Thereafter, NBK made misleading statements about the confidential settlement agreement that deceived others, the actions were material, the actions were in interstate commerce and resulted in injury to the Plaintiff. Since the settlement agreement was and may still be confidential, further information about the actions could be argued to be a breach of the confidentiality provisions.

100. Further, NBK made misleading statements on the potential leases in the building owned by the Plaintiff. The Plaintiff had numerous potential leases, NBK refused to approve the leases, the actions of NBK were misleading, the actions were deceptive as to both the Plaintiff and the potential leases, the actions were material in influencing the potential tenants in future relations with the Plaintiff, many of the larger proposed tenants were or are national companies in interstate commerce and the actions caused injury to the Plaintiff.

101. Further, the Plaintiff and principally its owner purchase liens on properties and to purchase properties oftentimes at foreclosure sales, but other times as purchasers from willing sellers. Many of these properties are worth millions of dollars. Buying properties worth millions of dollars is a very capital-intensive business. Consequently, Choudhri must maintain good reputations to assure that lenders will lend him money and buyers will enter into contracts to purchase their properties since the primary sources of capital necessary to keep this business functioning are capital from lenders and proceeds from the sales of their existing properties.

102. The capital utilized in the leases and businesses comes from and flows through interstate commerce and at times through international commerce, and the purchasers or some of

their members are oftentimes citizens of states other than Texas or countries other than the United States of America.

103. NBK has engaged in false advertising in violation of Section 43(a) of the Lanham Act as described above and possibly in other ways.

104. These acts and others were in violation of 15 USC § 1125(a), Section 43a of the Lanham Act.

**COUNT 12: ATTORNEYS' FEES**

105. Plaintiff repeats and realleges the allegations set forth in all preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

106. Plaintiff hereby sues Defendants for its reasonable and necessary attorneys' fees under breach of a written contract under Civil Practice and Remedies Code §38.001, under the fee shifting agreement of the contract, and under any statutory or common law right to recover same.

**VI. JURY DEMAND**

107. Plaintiff demands a jury trial and tenders the appropriate fee with this petition.

**VII. PRAYER**

108. For the reasons set forth above, Plaintiff asks that the Court enter a judgment relief in the following manners:

- a) Actual damages including economic injuries & consequential damages;
- b) Attorney's fees;
- c) Exemplary damages;
- d) Prejudgment and post judgment interest;
- e) Court costs; and

f) All other relief to which Plaintiff is entitled under both law and equity.

Respectfully submitted,

The Pope Law Firm  
6161 Savoy Drive, Suite 1125  
Houston, Texas 77036  
Ph: 713-449-4481  
Fx: 281-657-9693  
jamesp@thepopelawfirm.com

By: /s/ James Q. Pope  
James Q. Pope  
TBN: 24048738  
Attorney for Plaintiff

**CERTIFICATE OF SERVICE**

I certify that on December 17, 2023, a copy of the foregoing was served on interested parties by electronic service using the court's electronic noticing system.

By: /s/ James Q. Pope  
James Q. Pope

**Automated Certificate of eService**

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

James Pope on behalf of James Pope

Bar No. 24048738

jamesp@thepopelawfirm.com

Envelope ID: 82647538

Filing Code Description: Amended Filing

Filing Description: Plaintiff Sixth Amended Petition

Status as of 12/18/2023 9:54 AM CST

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Clouthier Law		info@clouthierlaw.com	12/17/2023 7:53:14 PM	SENT
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Elizabeth Klingensmith		liz.klingensmith@pillsburylaw.com	12/17/2023 7:53:14 PM	SENT

**Automated Certificate of eService**

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

James Pope on behalf of James Pope  
 Bar No. 24048738  
 jamesp@thepopelawfirm.com  
 Envelope ID: 82647538  
 Filing Code Description: Amended Filing  
 Filing Description: Plaintiff Sixth Amended Petition  
 Status as of 12/18/2023 9:54 AM CST

**Case Contacts**

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Ali Choudhri		ali@jetallcompanies.com	12/17/2023 7:53:14 PM	SENT

Associated Case Party: Ali Choudhri

Name	BarNumber	Email	TimestampSubmitted	Status
Ali Choudhri		legal@jetallcompanies.com	12/17/2023 7:53:14 PM	SENT



## EXHIBIT 3

# EXHIBIT

## B

Unofficial Copy Office of Marilyn Burgess District Clerk

**DECLARATION OF QUANELL X**

I, Quanell X Farrakhan, am a person over the age of eighteen (18) years and am competent to give this declaration. I have personal knowledge of the facts set forth in this declaration, and such facts are true and correct.

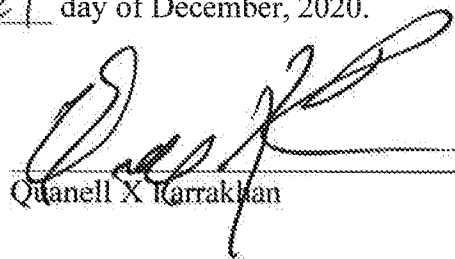
In October 2020, I met with Osama Abdullatif. During that meeting, Mr. Abdullatif told me he had text messages from Chris Wyatt. Mr. Abdullatif said he felt like Mr. Wyatt was trying to extort him. I understood Mr. Wyatt to be a former employee of Ali Choudhri. Mr. Abdullatif told me that he Mr. Wyatt wanted to sell Mr. Choudhri's business records/files and property.

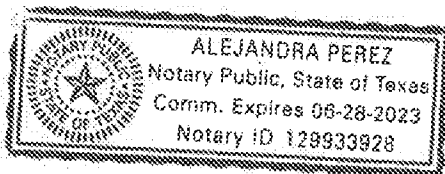
Mr. Abdullatif said he had in his phone text messages from Mr. Wyatt where Mr. Wyatt asked Mr. Abdullatif to pay \$200,000 in exchange for assisting and selling information and property to Mr. Abdullatif. Mr. Abdullatif told me he wanted to pay Mr. Wyatt for information and business records/files of Mr. Choudhri.

During this meeting Mr. Abdullatif showed me his phone and told me about a series of text messages from Chris Wyatt. The messages identified specific documents Mr. Wyatt was able to steal from his employer, Jetall companies, prior to his resignation. Wyatt's messages also touted his personal knowledge of Jetall's business operations and its President Ali Choudhri. Wyatt apparently believed his stolen documents and information were extremely valuable. The series of text messages culminated with a request by Wyatt for \$200,000.00 in exchange for his cooperation, information and the stolen property. Based on the text messages Mr. Abdullatif told me and related discussions, Mr. Wyatt asked Mr. Abdullatif to pay \$200,000 in exchange for assisting Mr. Abdullatif and providing him with documents and information belonging to Ali Choudhri. Mr. Wyatt asked Mr. Abdullatif to pay \$200,000 in exchange for assisting Mr. Abdullatif and providing him with documents and information belonging to Ali Choudhri.

My date of birth is 12-7-70, and my address is 10061 Rebel Rd.  
I declare under penalty of perjury that the foregoing is true and correct.

Executed in Harris County, Texas, on the 29 day of December, 2020.

  
\_\_\_\_\_  
Quanell X Farrakhan



## EXHIBIT 4

# EXHIBIT 14

## THIRD DECLARATION OF QUANELL X

I, Quanell X Farrakhan, am a person over the age of eighteen (18) years and am competent to give this declaration. I have personal knowledge of the facts set forth in this declaration, and such facts are true and correct.

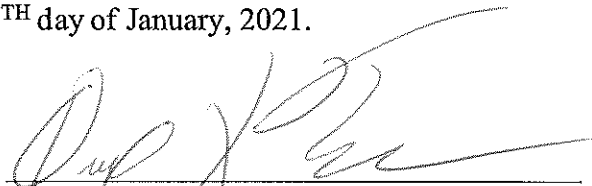
On approximately January 20, 2021, I received the text attached as Exhibit A hereto from Wayne Dolcefino.

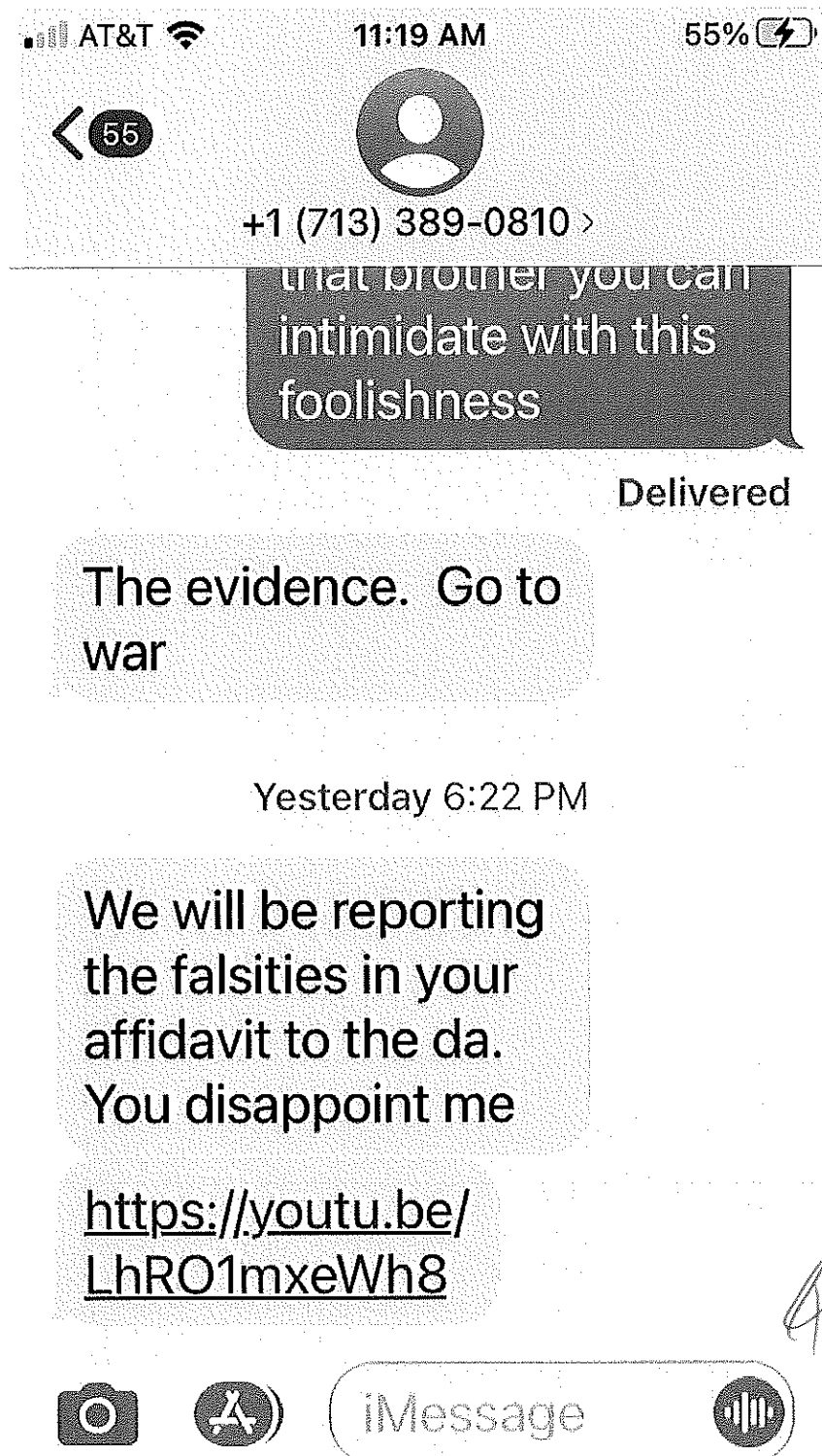
In regards to my prior Declarations and discussions of meetings with Osama Abdullatif, Abdullatif informed me in one of the meetings that Chris Wyatt had told him that Ali Choudhri had hired me to kill Abdullatif. Since this was obviously false, I spoke with officers from the Houston Police Department concerning these allegations and they confirmed to me that they had dismissed Wyatt's false accusations against me and Choudhri as a hoax.

My date of birth is December 7, 1970, and my address is 10061 Rebel Road, Houston, TX 77016.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Harris County, Texas, on the 25<sup>TH</sup> day of January, 2021.

  
\_\_\_\_\_  
Quanell X Farrakhan



AX  
[Signature]

## EXHIBIT 5

**In the Matter Of:**  
**TEXAS REIT LLC**

24-10120-smr

**OMAR KHAWAJA**

*September 11, 2024*



OMAR KHAWAJA  
TEXAS REIT LLC

September 11, 2024

1

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

In re: Chapter 11  
TEXAS REIT, LLC Case No.  
Debtor 24-10120-smr

REMOTE DEPOSITION OF  
OMAR KHAWAJA

September 11, 2024  
10:15 a.m.

5051 Westheimer, Suite 1200  
Houston, Texas

Cheryl Madriaga, Shorthand Reporter

OMAR KHAWAJA  
TEXAS REIT LLC

September 11, 2024

2

1 APPEARANCES OF COUNSEL:

2 On behalf of Debtor, Texas Reit, LLC:

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4 BARRON & NEWBURGER, P.C.  
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6 Austin, TX 78731  
(512) 476-9103  
ssather@bn-lawyers.com

7 On behalf of Deponent, Omar Khawaja:

8 MICHAEL BALLASES, ESQ.  
9 HOOVER SLOVACEK, LLP  
10 5051 Westheimer, Suite 1200  
Houston, Texas 77056  
(713) 977-8686  
11 ballases@hooverslovacek.com

12 On behalf of Dalio Holdings I and II, LLC:

13 LORI A. HOOD, ESQ.  
14 SHACKELFORD, MCKINLEY & NORTON, LLP  
15 717 Texas Avenue, 27th Floor  
Houston, TX 77002  
(832) 669-6081  
16 lhood@shackelford.law

17 Also Present:

18 Dwayne Mason, Esq., Greenberg Traurig, LLP -  
19 prospective counsel for Dalio Holdings I and II, LLC

20 Ali Chouhdri, pro se - in his individual capacity

21 Gene McCubbin - assistant to Lori Hood

22 Tammy Luu - assistant to Ali Choudhri

23 Osama Abdullatif - noticed deponent

24 John Quinlan - noticed deponent

25

OMAR KHAWAJA  
TEXAS REIT LLC

September 11, 2024

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PROCEEDINGS

THE REPORTER: We are on the record. The date is September 11th, 2024. This begins the deposition of Omar Khawaja.

My name is Cheryl Madriaga, representing Esquire Deposition Solutions.

Will counsel please state their name on the record and whom they represent?

MR. SATHER: Stephen Sather --

MR. BALLASES: Michael Ballases --

MR. SATHER: -- attorney for --

MR. BALLASES: -- (unintelligible) Khawaja --

THE REPORTER: Sorry --

MR. BALLASES: -- John Quinlan, and Osama Abdullatif.

THE REPORTER: Okay. Sorry. I just had two people speaking at once. Could I start with one counsel, please?

MR. BALLASES: Sure. Michael Ballases, counsel of record for the deponent, Omar Khawaja, also John Quinlan, also Osama Abdullatif.

THE REPORTER: Thank you.

MR. SATHER: Stephen Sather --

MR. BALLASES: You're welcome.

MR. SATHER: -- for Texas REIT, LLC, the

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debtor in this case.

MS. HOOD: Lori Hood of Dalio Holdings, a  
creditor in the case.

MR. CHOUDHRI: Ali Choudhri, a creditor in the  
case.

THE REPORTER: Okay. Is there anything else,  
or are we ready to have me swear in the witness?

MR. BALLASES: Now, there are other people on  
the call. They need to make an appearance.

MR. MASON: This is Dwayne Mason, prospective  
counsel for Dalio with Greenberg Traurig.

MR. MCCUBBIN: Gene McCubbin, assistant to  
Lori Hood.

MR. BALLASES: Okay. I'm going to object --  
this is Michael Ballases. I'm going to object to Lori  
Hood, her assistant, Ali Choudhri, and Dwayne Mason  
being present on the call. They're not -- they don't  
represent Texas REIT. They're not parties, they don't  
have standing, and they cannot participate. And this  
is not a creditors' meeting. So I want that to be on  
the record.

MR. SATHER: All right. Your objection is  
noted. Let's proceed.

THE REPORTER: Okay. And just before we go on  
the record, I just ask that we please do our best not

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1 to speak over one another.

2 Mr. Khawaja, please keep your voice nice and  
3 loud, allow counsel to finish his completely before  
4 you begin your answer, and all answers must be verbal.  
5 Thank you.

6 MR. CHOUDHRI: Just confirming, Madam Court  
7 Reporter, we are on the record; right?

8 THE REPORTER: Yes, we are.

9 MR. SATHER: All right.

10 MR. CHOUDHRI: Okay.

11 MR. SATHER: If you would swear in the  
12 witness, please.

13 OMAR KHAWAJA,  
14 having been first duly sworn, was examined and  
15 testified as follows:

16 EXAMINATION

17 MR. BALLASES: Real quick before we get  
18 started -- this is Michael Ballases -- I assume we  
19 have an agreement to take this deposition by the  
20 Federal Rules of Civil Procedure and also the Court's  
21 limiting instruction.

22 MR. SATHER: Yes.

23 MR. BALLASES: Okay.

24 BY MR. SATHER:

25 Q. All right. Mr. Khawaja, have you ever given a

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1 deposition before?

2 A. I don't think so, no.

3 Q. All right. But are you familiar with the

4 process for taking a deposition, sir?

5 A. Yes. Yes, I am.

6 Q. And do you understand that your testimony

7 today is under oath?

8 A. Yes, I do.

9 Q. And is there anyone present in the room with

10 you where you are giving your testimony?

11 A. Yes, my attorney, Michael Ballases, and the  
12 other two parties, Osama Abdullatif and John Quinlan.

13 Q. All right. And, Mr. Khawaja, do you  
14 understand that you cannot confer with any of the  
15 parties in the room with respect to your answers?

16 A. Yes, I do.

17 Q. Tell me what you do for a living.

18 A. I'm an attorney.

19 Q. And are you familiar with a company called  
20 Texas REIT, LLC?

21 A. Yes, I am.

22 Q. And how are you familiar with Texas REIT, LLC?

23 A. So an entity that Ali Choudhri owns.

24 Q. Okay.

25 A. Or controls.

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1 Q. And have you ever entered into a business  
2 transaction with Texas REIT, LLC?

3 A. No, I have not.

4 Q. Do you claim to be an owner of Texas REIT,  
5 LLC?

6 A. No, I don't.

7 Q. Have you ever filed a notice of lis pendens on  
8 behalf of any party against Texas REIT, LLC?

9 A. I may have, yes.

10 Q. Okay. And are you familiar with what a notice  
11 of lis pendens is?

12 A. Yes.

13 Q. Are you familiar with Ali Choudhri, who is  
14 present here today?

15 A. Yes.

16 Q. And how are you familiar with Mr. Choudhri?

17 A. I have litigation against him. He's defrauded  
18 me. He's defrauded people I know. I represent people  
19 against him. And, you know, we're sitting here in  
20 this case today, so I know him because I am a party in  
21 this case.

22 Q. All right. Are you familiar with Jetall  
23 Companies?

24 A. Yes.

25 Q. And how are you familiar with Jetall



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1 Companies?

2 A. It's an entity that Ali Choudhri controls or  
3 owns, and I have judgments against them.

4 MR. SATHER: All right. I'm going to share my  
5 screen and show Exhibit 1.

6 (Debtor's Exhibit No. 1 was marked for  
7 identification.)

8 Q. (BY MR. SATHER) I have previously provided  
9 this document to the court reporter and your counsel.

10 And so can you see Exhibit Number 1 on the  
11 screen, sir?

12 A. Yes, I do.

13 THE WITNESS: Do you have a physical copy too,  
14 Michael?

15 Q. (BY MR. SATHER) All right. Now, are you  
16 familiar -- are you aware that this is a proof of  
17 claim filed with the United States Bankruptcy Court?

18 A. Yes, I am.

19 Q. And are you one of the claimants listed on  
20 this proof of claim?

21 A. I am.

22 Q. And as I read the proof of claim, there are  
23 three individuals who are listed as the current  
24 creditor: John Quinlan, Omar Khawaja, and Osama  
25 Abdullatif. What is the relationship between the

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1 three individuals with respect to the proof of claim?

2 A. They're just judgment orders.

3 Q. Okay. But do each of you assert the claim

4 jointly and severally, or do each of you have

5 different pieces of the claim?

6 A. You know, jointly and severally.

7 Q. All right. Now, do you have an agreement

8 between the three of you as to how any monies received

9 on the claim will be divided?

10 A. Not particularly. I mean, you know, we don't

11 have a written agreement, from my understanding.

12 Q. Okay. Now, if I could go --

13 MR. BALLASES: (Unintelligible) Ballases. I'm

14 going to object. You're violating -- you're being

15 harassing and oppressive and that you're violating the

16 Court's limiting instruction.

17 I'm going to give you a little bit of leeway

18 to get into all this just because it's background, but

19 the purpose of this deposition is for you to ascertain

20 why my clients filed the proof of claim and why they

21 now want to withdraw it. And so I'll give you some

22 leeway, but I'm just letting you know.

23 MR. SATHER: All right. I disagree with that

24 contention. I've listened to Judge Robinson's ruling.

25 I think it's broader. But I'm going to continue on,

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1 and if we run into a problem, we may have to take that  
2 up with the Court. But let me move on with my  
3 questions.

4 Q. (BY MR. SATHER) Mr. Khawaja, did you sign the  
5 proof of claim?

6 A. I don't recall signing it. I may have. I  
7 don't know.

8 Q. Okay. Did you authorize filing the proof of  
9 claim?

10 A. Yes, I did.

11 Q. Did you read the proof of claim before it was  
12 filed?

13 A. Yes.

14 Q. What steps did you take to ensure that the  
15 proof of claim was accurate?

16 A. I read it.

17 Q. All right. Now, I'm going to go down to Box 7  
18 on the claim, and that has a dollar amount. Do you  
19 see that?

20 A. Yes.

21 Q. And do you know how that number was  
22 calculated?

23 A. I don't recall.

24 Q. Going to page 8 of 54, there is a summary of  
25 damages. Does that refresh your recollection as to

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1 how the proof of claim numbers were calculated?

2 A. Can you enlarge it just a little bit so I can

3 look at it carefully?

4 Q. Sure I can. It does depend on my ability to

5 work this. Does that help?

6 A. Yeah, that -- that helps. Thank you.

7 Q. And so do you know where -- and let me scroll

8 up here.

9 A. Sure.

10 Q. Do you know where these numbers came from?

11 A. This appears to be numbers that my counsel

12 provided.

13 Q. And for the record, who is your counsel who

14 provided the numbers?

15 A. Michael Ballases with Hoover Slovacek.

16 Q. And have you taken any steps personally to

17 verify that these amounts are correct?

18 A. I mean, I looked at the judgments before we

19 filed them.

20 Q. Anything else?

21 A. That's it.

22 Q. Now I'm going to go to Box 9 and -- now, on

23 this page, it asks: Is any -- all or any part of the

24 claim secured? And it's not checked, but I'd like to

25 go to a subsequent page. It may be a prior page.

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1 Excuse me.

2 Okay. Here we go. Looking at Box 9, do you

3 see where the box of, Is the claim secured, checked

4 "Yes." Do you see that, sir?

5 A. I do see that.

6 Q. What is the basis for the claim being secured

7 according to the proof of claim?

8 A. I mean, I'd have to ask my attorney.

9 Q. Okay. But it says -- and I believe this is

10 probably a typo, but it says "lis pendens." You think

11 that's a reference to filing of a notice of lis

12 pendens?

13 A. It could be.

14 Q. And is it your contention that filing a notice

15 of lis pendens creates an interest in property?

16 A. It doesn't create -- it doesn't create an

17 interest in property.

18 Q. All right. What do you believe that it does?

19 A. It secures a potential claim against property.

20 Q. Okay. Now, it's my understanding that the

21 proof of claim is based upon three separate judgments.

22 Is that your understanding?

23 A. I think that's accurate.

24 Q. Now, would you agree with me that none of

25 these judgments were taken against Texas REIT, LLC,

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1 the debtor in this case?

2 A. I believe that's correct.

3 Q. Now, I'm going to go down and look at the  
4 different judgments, and I'm going to ask you some  
5 questions about them. And actually I'm just going to  
6 start with the summary here.

7 Number 1 is -- Judgment 1 is called the "Davy  
8 and Heil Judgment." Do you see that?

9 A. I do.

10 Q. And this appears to be -- actually, I am going  
11 to go to the judgment. I apologize. This appears to  
12 be a judgment in a case from the Court of Appeal  
13 styled Jetall Companies, Inc., Appellant, versus  
14 Richard Heil, Todd Oakum, and Renee Davy, formerly  
15 known as Renee Davy, formally known as Renee Oakum.

16 Do you see that?

17 A. I do.

18 Q. Now, you were not a party to this judgment,  
19 were you, sir?

20 A. I was not.

21 Q. And what is your connection to the judgment  
22 that would give you the authority to submit a proof of  
23 claim in this case?

24 A. The judgment was assigned to me.

25 Q. Okay. And is that -- was that a written

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1 assignment of judgment?

2 A. Yes.

3 Q. And I will represent to you that the

4 assignment of judgment is not part of the proof of

5 claim. Do you know why that assignment was not

6 included?

7 A. I don't know why.

8 Q. And if we were to look at the assignment of

9 the judgment, would the assignee be just Omar Khawaja,

10 or would it be someone else?

11 A. I believe my assignment would have my name on

12 it. I'm not sure about the other assignments.

13 Q. Okay. So for this particular judgment, it was

14 assigned to you, Omar Khawaja?

15 A. I don't have it in front of me. It's possible

16 that Mr. Abdullatif and Mr. Quinlan's name are on the

17 assignment.

18 Q. All right. How much did you pay to have the

19 judgment assigned to you?

20 A. I don't recall.

21 Q. And did you pay anything to acquire the

22 judgment?

23 A. Yes, I did.

24 Q. Now, do you agree with me that this judgment

25 is against Jetall Companies and not Texas REIT?

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1 MR. BALLASES: Objection. Form.

2 A. This particular judgment is against Jetall;  
3 that is correct.

4 Q. (BY MR. SATHER) All right. And so do you  
5 contend that Texas REIT, LLC, is liable for a judgment  
6 against Jetall Companies, Inc.?

7 A. Yes, I do.

8 Q. And why do you contend that, sir?

9 A. Because all of the entities that Mr. Choudhri  
10 either controls or is involved in are essentially  
11 shell companies for his own personal finances, so  
12 any --

13 Q. (Unintelligible)

14 A. Any company are -- I'm sorry. Would you like  
15 me to continue, or --

16 Q. Yes, please.

17 A. -- do you want to --

18 Q. I did not mean to cut you off.

19 A. Sorry. I was saying any entity that  
20 Mr. Choudhri controls or owns is treated as if it is  
21 his own personal asset with no respect for the  
22 corporate form and, I believe, is responsible for --  
23 one entity is responsible for the other entity's  
24 conduct.

25 Q. Now I'd like to scroll down to the second



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1 judgment. And this document says it's a judgment from  
2 the 14th Court of Appeals in Jetall Companies, Inc.  
3 Versus Hoover Slovacek, LLP. Are you familiar with  
4 this judgment?

5 A. Yes, I am.

6 Q. Is Hoover Slovacek the law firm that is  
7 representing you today in connection with this  
8 deposition?

9 A. Yes, it is.

10 MR. BALLASES: Objection. Form.

11 Q. (BY MR. SATHER) You can answer.

12 A. Yes.

13 Q. What is your connection to -- your connection,  
14 if any, to this judgment?

15 A. I believe I acquired it.

16 Q. Did you acquire it by way of a written  
17 assignment?

18 A. Yes.

19 Q. And did you pay any consideration to Hoover  
20 Slovacek to acquire their judgment?

21 A. Yes.

22 Q. And how much did you pay them to acquire this  
23 judgment?

24 A. I don't recall how much I paid.

25 Q. And is it a regular part of your business to

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1 purchase judgments?

2 A. Yes, it is.

3 Q. Now, I may have asked this already, in which  
4 case I apologize, but do you have a written assignment  
5 of judgment?

6 A. Yes -- yes, I believe there is one. I don't  
7 have it in front of me.

8 Q. Is there a reason that assignment was not  
9 included with the proof of claim?

10 A. I don't know.

11 Q. And do you know whether the assignment would  
12 have been in favor of you, John Quinlan, Osama  
13 Abdullatif, or some combination of the three of you?

14 A. I believe all three of us. It was assigned to  
15 all three of us on the same instrument.

16 Q. Now, do you agree with me that this judgment  
17 is against Jetall Companies and not Texas REIT, LLC?

18 A. Yes.

19 Q. And why do you contend that Texas REIT, LLC,  
20 is liable for a judgment against Jetall Companies?

21 A. Because Texas REIT, LLC, is an alter ego of  
22 Jetall Companies, Inc.

23 Q. Now I'm going to go to the third judgment.  
24 And this is a judgment in a case -- well, first of  
25 all, do you see the judgment that I have up on the

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1 screen?

2 A. I do.

3 Q. And that appears to be a judgment in a case,  
4 Osama Abdullatif, individually, and Abdullatif &  
5 Company, LLC, versus Ali Choudhri and Houston Real  
6 Estate Properties, LLC; is that correct?

7 A. That's correct.

8 Q. And do you have an interest in this judgment,  
9 or is this just Mr. Abdullatif's judgment?

10 A. This particular judgment is Mr. Abdullatif's  
11 judgment.

12 Q. All right. So do you have any interest in  
13 this judgment whatsoever?

14 A. No, I do not.

15 MR. BALLASES: Objection. Form.

16 Q. (BY MR. SATHER) All right. Do you assert an  
17 interest in the judgment in Cause Number 2013-41273?

18 A. No.

19 MR. BALLASES: Objection. Form.

20 Q. (BY MR. SATHER) Now, of the three judgments  
21 we went through, you assert an interest in the first  
22 two, but not the third; is that correct?

23 MR. BALLASES: Objection. Form.

24 A. That's correct.

25 Q. (BY MR. SATHER) Now, continuing down in the

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1 claim, there is a copy of an adversary proceeding that  
2 was filed in the United States Bankruptcy Court for  
3 the Southern District of Texas. Are you familiar with  
4 this adversary proceeding?

5 A. Vaguely.

6 Q. Okay. And I see that you are named as one of  
7 the movants in the adversary proceeding. Do you see  
8 that?

9 A. Yes, I do.

10 Q. Did you authorize the adversary proceeding to  
11 be filed listing you as one of the participants?

12 A. Yes, I did.

13 Q. Did you read it before it was signed?

14 A. Yes, I did.

15 Q. Now, so what is your understanding of the role  
16 that this adver -- or that this original complaint  
17 plays with respect to the proof of claim that was  
18 filed on your behalf?

19 A. I mean, I'm not a bankruptcy attorney. We're  
20 doing whatever we need to do to try to collect our  
21 judgment.

22 Q. So you're an attorney; right?

23 A. Yes.

24 Q. And you -- when you represent clients, you  
25 file pleadings on their behalf; correct?

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1 A. That's correct.

2 Q. And -- but your clients need to understand  
3 what you're filing for them, don't they? Isn't that  
4 part of the rules regarding filing lawsuits?

5 A. Yes.

6 Q. What steps did you take to familiarize  
7 yourself with the allegations in this adversary  
8 proceeding?

9 A. I reviewed the judgments, and I reviewed the  
10 complaint.

11 Q. And after reviewing them, did you conclude  
12 that the allegations were true and correct?

13 A. Yes, I did.

14 Q. Now I'm going to read you a statement in  
15 paragraph 1 of the adversary proceeding, which says:

16 This lawsuit shall prove that Jetall  
17 Companies, Inc., Arabella PH 3201, LLC,  
18 9201 Memorial Drive, LLC, 2727 Kirby 26L,  
19 LLC, Texas REIT, LLC, Dalio Holdings I,  
20 LLC, Dalio Holdings II, LLC, Houston Real  
21 Estate Properties, LLC, Shahnaz Choudhri,  
22 Ali Choudhri, Shepherd-Huldy  
23 Development I, LLC, Shepherd-Huldy  
24 Development II, LLC, and Galleria Loop  
25 Note Holder, LLC, (collectively the

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Choudhri defendants) are alter egos of each other and intentionally acting in a manner to defraud creditors and evade legal obligations through a series of fraudulent transfers. The evidence will demonstrate that Ali Choudhri is the puppeteer controlling his web of business entities, which hold his various properties and other assets. This web includes Houston Real Estate Properties, LLC, and Jetall Companies, Inc., as well as the other named defendants.

Did I read that correctly?

A. Yes, you did.

Q. Do you have an understanding of what it means to say that one person or company is the alter ego of another person or company?

A. Yes.

Q. And what is your understanding?

A. That one entity pays the debts or obligations of another. They commingle funds, commingle assets. One principal is taking actions on behalf of any of the various alter egos at any given time with no respect for the corporate form. Yeah, that's my -- that's my understanding.

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1 Q. All right. Now, is it your contention that  
2 each of the 13 persons and companies named as  
3 defendants is the alter ego of every other one of the  
4 persons and companies named?

5 A. That's what --

6 MR. BALLASES: Objection. Form.

7 A. Yes.

8 Q. (BY MR. SATHER) So are you contending that  
9 Texas REIT is the alter ego of Jetall Companies?

10 MR. BALLASES: Objection. Form.

11 A. That's what it says. Yes.

12 Q. (BY MR. SATHER) And are you alleging that  
13 Texas REIT is the alter ego of Arabella PH 3201, LLC?

14 A. Yes.

15 MR. BALLASES: Objection. Form.

16 Q. (BY MR. SATHER) Are you alleging that Texas  
17 REIT is the alter ego of Dalio I Holdings (sic), LLC?

18 MR. BALLASES: Objection. Form.

19 A. Yes.

20 Q. (BY MR. SATHER) And would your answers be the  
21 same if I went through all of the rest of the names of  
22 the defendants in this case?

23 A. Yes, because Ali Choudhri controls all of  
24 them.

25 Q. All right. And so are you alleging that Ali

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1 Choudhri and Shahnaz Choudhri are alter egos of each  
2 other?

3 A. Yes.

4 MR. BALLASES: Objection. Form.

5 Q. (BY MR. SATHER) So are you -- it's your  
6 contention that any company or entity in which Ali  
7 Choudhri has an interest is an alter ego of Ali  
8 Choudhri?

9 MR. BALLASES: Objection. Form.

10 A. I don't know if there's any. I mean, are  
11 there entities that I don't know about? I don't know.

12 Q. (BY MR. SATHER) Were you aware that there was  
13 an amended complaint filed that names 17 defendants?

14 A. I believe --

15 MR. BALLASES: Objection. Form.

16 A. I believe so.

17 Q. (BY MR. SATHER) And is it your contention  
18 that each of the 17 defendants is the alter ego of  
19 each of the other 17 defendants?

20 A. If that's what the petition says, yes, that's  
21 my contention.

22 Q. The complaint alleges that each of the claimed  
23 alter egos were, quote (Reading:) ...intentionally  
24 acting in a manner to defraud creditors and evade  
25 legal obligations through a series of fraudulent



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1 transfers.

2 Did I read that right?

3 A. Yes, you did.

4 Q. So are you claiming that every one of these 13  
5 or 17 persons and companies listed made fraudulent  
6 transfers to each and every other one of the persons  
7 and companies listed?

8 A. Yes.

9 Q. So, for example, are you claiming that Shahnaz  
10 Choudhri made fraudulent transfers to 2727 Kirby 26L,  
11 LLC?

12 A. I don't know about that.

13 Q. As we sit here today, do you know of any  
14 fraudulent transfers that any of these defendants made  
15 to Texas REIT, LLC, the debtor in this case?

16 A. I don't.

17 Q. And so with respect to that particular  
18 allegation about making fraudulent transfers, you're  
19 not aware of any involving the debtor in this case;  
20 correct?

21 A. I'm not aware of any sitting as -- as I'm  
22 sitting here right now. But any specific one? No.

23 Q. And what would you need to do --

24 THE WITNESS: Oh, Mr. Sather, I'm sorry. I  
25 need to just take a quick restroom break if you don't

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1 mind.

2 MR. SATHER: All right --

3 MR. CHOUDHRI: No. No. No. Hold on. Let's  
4 finish this line of questioning. Please ask your  
5 question --

6 MR. SATHER: Mr. Choudhri -- Mr. Choudhri,  
7 it's my questions. I decide whether we're going to  
8 take a bathroom break or not.

9 I don't have a problem with taking a break,  
10 but do not discuss your testimony with your attorney  
11 while we're off the record.

12 THE WITNESS: Not a problem.

13 MR. SATHER: All right. And so five minutes?

14 THE WITNESS: Five minutes should be good.

15 MR. SATHER: All right. Madam Reporter, we  
16 will be off the record for five minutes.

17 THE REPORTER: Off the record.

18 (A recess was taken.)

19 THE REPORTER: All right. We are back on the  
20 record.

21 Q. (BY MR. SATHER) And, Mr. Khawaja, I want to  
22 follow up on something I asked you earlier. When I  
23 asked you how you knew Ali Choudhri, you said that he  
24 defrauded you. Can you tell me what transaction that  
25 he defrauded you with regard to?

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1 MR. BALLASES: Objection. Form.

2 A. It was an apartment complex that my family  
3 owned.

4 Q. (BY MR. SATHER) And was it you personally, or  
5 was it your family?

6 MR. BALLASES: I'm going to instruct the  
7 witness not to answer. He's here to answer the basis  
8 for his proof of claim and why he wants to withdraw  
9 it. That's not a part of his claim. It's not alleged  
10 in any of the documents, and therefore, it's outside  
11 the scope of the judge's limiting instruction.

12 Q. (BY MR. SATHER) Is this prior transaction --  
13 have anything to do with this case?

14 A. I'm sorry. Can you repeat that question?

15 Q. Yes. Does the prior transaction where you say  
16 Mr. Choudhri defrauded you or your family -- does that  
17 have anything to do with the proof of claim against  
18 Texas REIT?

19 A. No.

20 Q. Now, earlier I asked you about whether your  
21 business involved purchasing judgments, and I also --  
22 you also testified that you're an attorney. Are those  
23 separate businesses that you're involved in?

24 A. No.

25 Q. And so do you purchase judgments through your

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1 law firm?

2 A. Yes.

3 Q. And about how many judgments have you

4 purchased in, say, the last five years?

5 MR. BALLASES: Objection. Form.

6 A. I don't know. I'm not sure, to be honest with

7 you.

8 Q. (BY MR. SATHER) More than ten?

9 A. No, probably not more than ten.

10 Q. And --

11 MR. BALLASES: Objection. Form.

12 Q. (BY MR. SATHER) -- have you -- do you

13 purchase judgments against anyone other than entities

14 related to Ali Choudhri?

15 MR. BALLASES: Objection. Form.

16 A. Not that I can recall.

17 Q. (BY MR. SATHER) All right. So when we talk

18 about your purchase of judgments, that -- at least as

19 you recall today, those relate to your dealings with

20 Ali Choudhri.

21 A. Yes.

22 Q. And how would you describe your relationship

23 with Mr. Choudhri?

24 MR. BALLASES: Objection. Form.

25 A. What do you -- what do you mean?

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1 Q. (BY MR. SATHER) Is it cordial? Unpleasant?

2 Adversarial?

3 MR. BALLASES: Objection. Form.

4 A. He owes me money. I mean, that's about it.

5 Q. (BY MR. SATHER) Going back to the adversary

6 proceeding that's part of the proof of claim, I'm

7 going to go to paragraph 22. And it's kind of a long

8 paragraph, so I'm just going to read you some

9 sentences towards the end where it says, quote

10 (Reading:) Choudhri views HREP, Jetall, and himself,

11 as well as the other named defendants, as one and the

12 same and utilizes them in such a fashion. In other

13 words, there is unity between Choudhri, HREP, Jetall,

14 and his other business entities such that the

15 separateness of the business entities has ceased, and

16 thus this Court should treat the Choudhri defendants

17 accordingly to protect plaintiffs/the creditors. And

18 this is where the lawsuit begins.

19 So did I read that correctly?

20 A. Yes.

21 Q. And so what is the basis for your statement

22 that Mr. Choudhri views all of the Choudhri defendants

23 as one and the same?

24 MR. BALLASES: Objection. Form.

25 A. It's in the petition, Counsel. All of the

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1 bases that we have are listed out in very clear, you  
2 know, language, just like you read.

3 Q. (BY MR. SATHER) Can you articulate what any  
4 of those bases are?

5 A. It's -- I mean --

6 MR. BALLASES: Objection. Form.

7 A. -- do you want me to -- do you want me to  
8 start reading the petition for you? I'm happy to read  
9 it for you, but it's in the petition.

10 Q. (BY MR. SATHER) I'm asking you -- I mean,  
11 without reading the petition, do you know what the  
12 basis for the allegations is?

13 A. I mean the -- without reading the petition,  
14 the purpose of the petition was to articulate the  
15 basis of the petition. So it's in the petition  
16 itself. I'm happy to read through the petition for  
17 you if you'd like me to, but in -- in plain language,  
18 he treats every entity that he controls or owns as a  
19 personal piggy bank, just like the petition states.  
20 And that's the basis of the alter ego claim that we're  
21 making.

22 Q. All right. And so your allegation is also  
23 that he views his mother as one and the same with  
24 himself?

25 MR. BALLASES: Objection. Form.

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1 A. Yes.

2 Q. (BY MR. SATHER) Now, you obviously don't  
3 contend that they're the same person; right? You --  
4 they are different human beings.

5 MR. BALLASES: Objection. Form.  
6 (Crosstalk)

7 A. Sorry. Is that a -- was that -- do you really  
8 want me to answer that question? I'm not sure.

9 Q. (BY MR. SATHER) Yes, I do. I wouldn't have  
10 asked it if I --

11 A. You mean like Norman Bates, that kind of thing  
12 or -- is that what -- I'm sorry. It's just a  
13 stupid --

14 Q. (BY MR. SATHER) I just want you to  
15 acknowledge that these are two different human beings,  
16 sir.

17 A. Yes, sir. Yes, they're two different human  
18 beings.

19 Q. And so is it your contention that there's no  
20 separateness between, say, Houston Real Estate  
21 Properties, LLC, and Texas REIT, LLC?

22 MR. BALLASES: Objection. Form.

23 A. Again, I'm gonna -- I'm gonna refer you back,  
24 Mr. Sather, to the petition. That's what the petition  
25 states.

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1 Q. (BY MR. SATHER) All right. And you contend  
2 that -- and you stand by the allegations in the  
3 petition.

4 A. Yes, sir. I stand by each and every  
5 allegation in the petition.

6 MR. BALLASES: Objection. Form.

7 Q. (BY MR. SATHER) And so is everything that you  
8 know about this allegation of alter ego contained in  
9 the petition?

10 A. I mean, we don't -- I don't believe we  
11 finished discovering the process, sir, so we're -- I'm  
12 sure we're gonna get to learn a lot more about the  
13 alter-ego basis on which Mr. Choudhri operates and the  
14 other defendants.

15 Q. And so did the petition set forth all of the  
16 bases that you knew about at the time it was filed?

17 A. In a good faith manner, yes.

18 Q. All right. What does that mean, "in a good  
19 faith manner"?

20 MR. BALLASES: Objection. Form.

21 A. To the best of our ability, right, on some --  
22 on some evidence that we've been able to muster.

23 Q. (BY MR. SATHER) Did you intentionally omit  
24 any bases for making an allegation of alter ego?

25 A. No.



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1 MR. BALLASES: No, I instruct the client not  
2 to answer, simply because you're invading attorney  
3 work product, legal privileges. What we decided to  
4 put in or not in our petition is subject to work  
5 product and privilege. Don't invade our privilege,  
6 please.

7 Q. (BY MR. SATHER) All right. Do you know of  
8 any evidence that you decided not to include in the  
9 petition?

10 MR. BALLASES: Same assertion of privilege.

11 Q. (BY MR. SATHER) You can answer, sir.

12 MR. BALLASES: It's work product and  
13 privilege. I'm instructing him not to answer. It's  
14 invading a legal privilege that he enjoys.

15 THE REPORTER: And I'm sorry. Counsel, if I  
16 could just get you to just speak up a little bit as  
17 well. You're just sounding a little bit muffled.

18 MR. BALLASES: Yes, ma'am.

19 THE REPORTER: Thank you.

20 Q. (BY MR. SATHER) I'd like to go to  
21 paragraph 23 where it says (Reading:) Plaintiffs are  
22 upstanding, honest, and respectable businessmen, real  
23 estate developers, attorneys, and/or a combination of  
24 all.

25 Which of those categories do you fall into,

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1 sir?

2 A. (Reading:) Plaintiffs are upstanding, honest,  
3 respectable businessmen, attorneys --

4 A combination.

5 Q. Okay. A combination of what?

6 A. Of all.

7 Q. Okay. So you're a businessman, real estate  
8 developer, and attorney?

9 A. But I'm also upstanding, honest, and  
10 respectable.

11 Q. Okay. Now, was it upstanding, honest, and  
12 respectable for you to sponsor Mr. Choudhri's ex-wife  
13 to claim to still be married to him and file notices  
14 of lis pendens against all of his properties?

15 MR. BALLASES: I'm going to instruct the  
16 client not to answer. You are violating the Court's  
17 limiting instruction as to this deposition, and the  
18 purpose of this deposition is to find the basis for  
19 the filing of the proof of claim and why we are  
20 willing to withdraw it now. I'll let you go on and  
21 get past that, but I'm going to start putting stops to  
22 it if this is the kind of stuff we're going to have.

23 Q. (BY MR. SATHER) Okay. But it's your  
24 contention that you are, in fact, an upstanding,  
25 honest, and respectable businessman, real estate

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1 developer, and attorney, sir.

2 A. Yes --

3 MR. BALLASES: Objection. Form.

4 MR. SATHER: Now, I'm going to move on to a  
5 different exhibit, Exhibit Number 2, assuming I can  
6 bring it up on the screen.

7 (Debtor's Exhibit No. 2 was marked for  
8 identification.)

9 Q. (BY MR. SATHER) Actually, one thing I didn't  
10 ask you, Mr. Khawaja: How old of a man are you?

11 A. 46.

12 Q. And are you licensed to practice law in the  
13 state of Texas?

14 A. Yes, I am.

15 Q. And when were you licensed?

16 MR. BALLASES: Objection. Form.

17 A. 2010.

18 Q. (BY MR. SATHER) I've brought up on the screen  
19 what we've marked as Exhibit 2, which is titled  
20 "Supplemental Notice of Lis Pendens." Are you  
21 familiar with this document?

22 MR. BALLASES: Mr. Sather, we don't have  
23 copies of that. Could you please e-mail that to  
24 myself and Steve Leyh and any other exhibits you'd  
25 like to use?

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1 MR. SATHER: Sure. Those should've been  
2 provided to you in a ShareFile yesterday.

3 MR. BALLASES: Could you resend them?

4 MR. SATHER: I will -- yes, I will resend  
5 those --

6 MR. BALLASES: Please send them to Steve and  
7 myself.

8 MR. SATHER: My computer is lagging just a  
9 little bit, so it'll take a second for them to load.  
10 But I had tried to provide these to you ahead of time  
11 so we could avoid this.

12 Okay. And as you can see from the screen  
13 share, I have sent the e-mail to you.

14 THE WITNESS: Michael, I think he's addressing  
15 you on the e-mail.

16 MR. BALLASES: That's fine.

17 Q. (BY MR. SATHER) Now, what we've marked as  
18 Exhibit Number 2 is a supplemental notice of lis  
19 pendens. And I'm going to scroll down to the end of  
20 it, and do you see the real property description  
21 there?

22 A. I do, yes.

23 Q. And are you aware that that is real property  
24 owned by Texas REIT, LLC?

25 A. Yes.

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1 Q. And are you familiar with this notice of  
2 lis pendens?

3 A. I believe I looked at it before it was filed,  
4 yes.

5 Q. And it looks like it's filed by  
6 Mr. Abdullatif, and he is one of the parties to the  
7 proof of claim; correct?

8 A. Yes.

9 MR. BALLASES: Objection. Form.

10 Q. (BY MR. SATHER) And did you approve of the  
11 filing of this notice?

12 A. I must have if it was filed.

13 Q. And what's your understanding of the purpose  
14 of this notice?

15 A. To make sure that we secure any proceeds that  
16 could potentially come to Ali Choudhri or his entities  
17 that he owes to us.

18 Q. And do you know why it was filed?

19 A. For that reason.

20 MR. SATHER: I'm going to show you another lis  
21 pendens which we have marked as Exhibit Number 3.

22 (Debtor's Exhibit No. 3 was marked for  
23 identification.)

24 Q. (BY MR. SATHER) And are you familiar with  
25 this document?

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1 A. Exhibit Number 3. Sorry. Yes.

2 Q. And I see this was signed by Osama Abdullatif  
3 as well.

4 A. Yes.

5 Q. And would your questions be the same -- or  
6 your answers be the same with regard to this notice of  
7 lis pendens as with the prior one?

8 A. Yes.

9 MR. SATHER: I'm going to switch gears now and  
10 go to Exhibit Number 4, which is an adversary  
11 complaint filed by George Lee against Texas REIT, LLC,  
12 and Ali Choudhri -- or at Exhibit 4. Excuse me.

13 (Debtor's Exhibit No. 4 was marked for  
14 identification.)

15 Q. (BY MR. SATHER) Do you know George Lee?

16 MR. BALLASES: I'm going to object to this  
17 line of questioning and instruct the witness not to  
18 answer as it exceeds the scope of the limited  
19 deposition the judge granted you. This has nothing to  
20 do with our proof of claim or adversary proceeding.

21 Q. (BY MR. SATHER) Are you going to take your  
22 counsel's advice?

23 A. I am.

24 Q. So let me just ask you by way of background.  
25 Do you know George Lee?

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1 MR. BALLASES: Objection. Form. Same -- same  
2 instruction.

3 Q. (BY MR. SATHER) Are you refusing --

4 MR. CHOUDHRI: So (unintelligible) --

5 Q. (BY MR. SATHER) -- to answer that you know  
6 George Lee?

7 MR. BALLASES: Objection to form. Same  
8 objection; this has nothing to do with our claim, and  
9 you're exceeding the scope of the limited deposition  
10 the judge granted.

11 A. I'm taking my counsel's advice.

12 MR. CHOUDHRI: I just want to make sure the  
13 record is clear. Are you instructing the witness not  
14 to answer?

15 MR. SATHER: Mr. Choudhri, let me --

16 MR. BALLASES: Mr. Choudhri, please be quiet.  
17 You're not a party involved in this. You have no  
18 standing to be here.

19 MR. SATHER: He actually does under the  
20 Court's ruling. But, Mr. Ballases --

21 MR. CHOUDHRI: Wait a second. Wait -- wait --  
22 wait a second. I want to get this on the record.

23 Mr. Ballases, I am here, and I have a standing  
24 to object. Okay? And so --

25 MR. BALLASES: (Unintelligible)

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1 MR. CHOUDHRI: -- I have a standing to be  
2 here. So are you telling me on the record that you  
3 are not going to cooperate and allow me to ask  
4 questions on a deposition that I've cross-noticed?

5 MR. BALLASES: That is correct. You have no  
6 party -- you're not a party in this proceeding. You  
7 have no standing. We've also objected to your  
8 cross-notice, so you better bet your bottom dollar.

9 MR. CHOUDHRI: Okay. Besides betting my  
10 bottom dollar, Mr. Ballases, you understand that the  
11 Honorable Judge Robinson made a ruling --

12 MR. BALLASES: You're wasting your time --

13 MR. CHOUDHRI: -- and said that --

14 MR. BALLASES: -- (unintelligible) with the  
15 judge's ruling. Why don't you let your counsel ask  
16 questions.

17 MR. CHOUDHRI: No, no. I'm here representing  
18 myself pro se as a creditor. I have filed a proof of  
19 claim. I'm a creditor. I have standing.

20 Are you saying on the record that you are  
21 going to instruct your client not to answer any of my  
22 questions? I just want to get this on the record so  
23 it's clear. Are you instructing your client not to  
24 answer any questions, and is your client going to take  
25 your advice?



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1 MR. BALLASES: Yeah, so the way this  
2 proceeding words, there's a court reporter who writes  
3 down everything we say. I've been clear in my speech  
4 and what I say in my objections. If you're confused,  
5 you can ask the court reporter to read it back, or you  
6 can just take better notes. Be quiet, and let your  
7 counsel ask questions.

8 MR. CHOUDHRI: So just so the record is  
9 crystal clear, Mr. Ballases, you are instructing your  
10 client, Omar Khawaja, who is a deponent today, to not  
11 answer any questions that I'm gonna have, and you're  
12 also obstructing my ability to object or make any  
13 objections in this deposition. Is that all correct?  
14 I just want to make sure the record is very crystal  
15 clear.

16 MR. BALLASES: Let Mr. Sather ask his  
17 questions. Please be quiet.

18 MR. CHOUDHRI: Sir, I just want to clarify,  
19 because I have a right to be here and object, and you  
20 are --

21 MR. BALLASES: Let --

22 MR. CHOUDHRI: -- telling me to be quiet.

23 MR. BALLASES: -- (unintelligible) questions.  
24 So let your counsel ask questions. You're wasting  
25 everybody's time.

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1 MR. CHOUDHRI: Okay. Just so the record is  
2 clear, you are refusing to allow me to participate and  
3 object and ask questions in this deposition that I've  
4 cross-noticed; is that correct? So we're clear, is  
5 that correct or not?

6 MR. BALLASES: You are not a party. You do  
7 not --

8 THE REPORTER: I'm --

9 MR. BALLASES: Let me make it very clear for  
10 you. You are not a party to this dispute. You are  
11 not an attorney. You lack standing. This is not a  
12 creditors' meeting. We've objected to your  
13 cross-notice. Is that clear enough for you, buddy?

14 MR. CHOUDHRI: Mr. Sather, please proceed.  
15 We'll -- we'll deal with this on the record later and  
16 deal with the Court.

17 And -- and as you know, Mr. Ballases, counsel  
18 for Dalio is also on the line. Are you also objecting  
19 for them -- for Dalio's counsel to ask questions? Is  
20 that your --

21 MR. BALLASES: Yeah.

22 MR. CHOUDHRI: -- position?

23 MR. BALLASES: Yeah.

24 MR. CHOUDHRI: And you're gonna instruct your  
25 client, Omar Khawaja, to not answer questions --

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1 MR. BALLASES: Mr. Choudhri, my point is you  
2 like to play attorney, but you're not an attorney, and  
3 you don't know the legal procedure or the rules or  
4 regulations of court. So please be quiet and let the  
5 deposition proceed. You're wasting everybody's time.

6 MR. CHOUDHRI: Okay, Mr. Ballases. You don't  
7 have to be disrespectful. I was -- you know, the  
8 rules apply to all of us. If I'm pro se or if -- or  
9 if you're a lawyer, the rules apply equally. And I  
10 have to follow the rules, just like you have to follow  
11 the rules. And when a judge makes a ruling, it  
12 applies, and it says what it says. We all got to  
13 honor it. But you're refusing to honor the judge's  
14 ruling. I understand that. You're refusing to honor  
15 what --

16 MR. BALLASES: (Unintelligible)

17 MR. CHOUDHRI: -- Judge Robinson said on his  
18 oral order.

19 THE REPORTER: Sorry. Just one person at a  
20 time.

21 Mr. Ballases, I can hear you speaking in the  
22 background, but I can't hear what you're saying while  
23 Mr. Choudhri is speaking.

24 So just one person at a time if you'd like  
25 this on the record, please.

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1 MR. BALLASES: Mr. Sather, please continue.

2 Q. (BY MR. SATHER) Mr. Khawaja, I have brought  
3 back up Exhibit Number 1, the proof of claim. When  
4 you authorized the proof of claim to be filed, did you  
5 understand that it was being filed under penalty of  
6 perjury?

7 A. Yes.

8 Q. And as a lawyer, do you know what penalty of  
9 perjury means?

10 A. Yes.

11 MR. BALLASES: Objection. Form.

12 Q. (BY MR. SATHER) Now, what was your purpose in  
13 filing the proof of claim?

14 A. The purpose in filing the proof of claim? I  
15 mean, it's to collect monies that are owed to us.

16 Q. Any other purpose?

17 A. No, that's it.

18 Q. Now, I'm going to show you Exhibit Number 5,  
19 and I'm going to try to make it bigger.

20 (Debtor's Exhibit No. 5 was marked for  
21 identification.)

22 Q. (BY MR. SATHER) Were you aware that Texas  
23 REIT, LLC, filed an objection to the proof of claim?

24 A. Yes.

25 Q. And were you aware that you have not filed a

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1 response to this objection to proof of claim?

2 A. No.

3 Q. And do you see that this was filed with

4 negative notice language?

5 A. I'm not sure what that means, sir.

6 Q. Okay. Fair question.

7 Next, I'd like to show you what we've marked

8 as Exhibit Number 6, which is --

9 A. Yes.

10 Q. -- a motion for leave to withdraw Claim

11 Number 9.

12 (Debtor's Exhibit No. 6 was marked for

13 identification.)

14 Q. (BY MR. SATHER) Do you see that?

15 A. Yes, sir, I do.

16 Q. And what is your understanding of the reason

17 why you filed a -- well, let me ask you this: Did you

18 authorize the motion for leave to withdraw Claim

19 Number 9?

20 A. I did.

21 Q. And why did you authorize the claim to be

22 withdrawn?

23 A. It appears there's no money in Texas REIT,

24 LLC.

25 Q. Any other reason?

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1 A. No, sir. That's it.

2 Q. And do you understand that the consequence of  
3 withdrawing the claim means that you're not able to  
4 assert a claim to any of the property in the Texas  
5 REIT bankruptcy estate?

6 MR. BALLASES: Objection. Form. You're going  
7 beyond the scope of the limited purpose of this  
8 deposition.

9 MR. SATHER: I don't believe so.

10 Q. (BY MR. SATHER) Are you aware that Texas REIT  
11 has objected to withdrawal of the proof of claim  
12 unless it is withdrawn with prejudice?

13 A. I wasn't aware of that, no.

14 Q. All right. Do you know what "with prejudice"  
15 means?

16 A. Yes, I do.

17 Q. And you understand that if the claim is  
18 withdrawn with prejudice, you can never make these  
19 allegations against Texas REIT again.

20 A. Yes, I understand that.

21 MR. SATHER: All right. At this point I will  
22 pass the witness. I know there are other counsel  
23 present who wish to ask questions, and so I'm not  
24 concluding the deposition. I'm giving the other  
25 parties present an opportunity to ask their questions.

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1 BY MS. HOOD:

2 Q. Mr. Khawaja, my name is Lori Hood, and I  
3 represent Dalio Holdings. Nice to meet you.

4 MR. BALLASES: Ms. Hood --

5 A. Nice to meet you.

6 MR. BALLASES: -- I'm going to go ahead and  
7 just object. I'm not going to let you ask questions.  
8 You're not a party to this dispute, and you lack  
9 standing to be here. This isn't a creditors' meeting,  
10 and so -- and of course, your notice was just filed  
11 this morning, which we're going to object to. So I'm  
12 not going to let you ask questions.

13 MS. HOOD: All right. Mr. Ballases, my notice  
14 was this morning because you failed to give notice to  
15 all the creditors that this was taking place.

16 In my understanding -- and my client is a  
17 creditor. In my understanding of the judge's ruling,  
18 it allows for creditors to be in attendance at this  
19 deposition and to ask questions of your clients as to  
20 the basis and motivation of their filing the proof of  
21 claim. We can argue all day long about whether you  
22 agree with that or not. If you don't allow me to take  
23 questions -- ask questions today, then we're going to  
24 have a do-over because we're going to go back to the  
25 Court and seek a motion to compel your client's

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1 attendance at a deposition where I will ask my  
2 questions.

3 MR. BALLASES: So that's not the Court's  
4 order. The Court's order was to allow Mr. Sather to  
5 take questions -- or to ask questions to determine the  
6 basis to -- as to why we filed the proof of claim and  
7 why it has been requested to be withdrawn.

8 It is not for creditors to ask questions. The  
9 creditors -- this isn't a creditors' meeting, and so  
10 I'm not going to let you ask -- I mean, you can ask  
11 him, but I'm going to instruct him not to answer  
12 because I think you're violating the Court's ruling,  
13 and I'm going to abide by the Court's ruling.

14 MS. HOOD: So you're -- no matter what  
15 question I ask him, you're going to tell him not to  
16 answer me?

17 MR. BALLASES: Yes, ma'am.

18 MS. HOOD: Okay. And that's --

19 MR. BALLASES: You're violating the Court's  
20 ruling, and I want to abide by it.

21 MS. HOOD: All right. So you want to abide by  
22 the Court's ruling, and we have a difference of  
23 opinion as to the impact and the breadth of the  
24 Court's ruling.

25 I'm going to tell you I'm going to file a



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1 motion to compel your client's attendance at a  
2 deposition where I'm going to be allowed to ask  
3 questions. And when I do so, I'm going to ask for  
4 compensation of my attorney's fees. Do you understand  
5 that?

6 MR. BALLASES: I understand.

7 MS. HOOD: All right. And just to be clear on  
8 the record, Madam Court Reporter, Mr. Ballases is  
9 stating to me on the record that he's going to  
10 instruct his client not to answer any of my questions  
11 that I have prepared for today, all relating to the  
12 filing of the proof of claim and the motivation for  
13 filing the proof of claim and the motivation for  
14 withdrawing the proof of claim, all of which go into  
15 the merits of the judge's order.

16 And I'm objecting to Mr. Ballases' refusal to  
17 allow me to take questions -- or ask questions of his  
18 client and putting him on notice that I am going to  
19 seek my attorney's fees as compensation for me having  
20 to do a do-over with his client.

21 MR. BALLASES: For the record -- so again,  
22 this is Michael Ballases -- I believe Ms. Hood is  
23 misinterpreting the judge's ruling. She's not a party  
24 to this -- her client is not a party to this dispute.  
25 They lack standing. This is not a creditors' meeting.

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1 The basis of this deposition was for a limited purpose  
2 to allow the debtor to inquire as to why we filed the  
3 proof of claim and why we now want to withdraw it. We  
4 are abiding by the judge's ruling, and we will not  
5 deviate from it.

6 MS. HOOD: Mr. Ballases, please don't put  
7 words in my mouth. And just because, you know, we're  
8 here taking a deposition doesn't mean you always have  
9 to get the last word in. We are in a disagreement  
10 about your statements. You're not going to allow --  
11 you're going to instruct your client not to answer my  
12 questions. There's not much I can do about it if he's  
13 going to sit here and not answer my questions.

14 I will go back to the Court and ask for him to  
15 reappear and answer my questions related to the  
16 subject of this deposition of which I represent a  
17 creditor, and we are entitled to ask questions.

18 Your client's proof of claim has unnecessarily  
19 complicated the underlying chapter proceeding and  
20 gummed up a lot of other issues with regard to the  
21 debtor's property, and even today they haven't  
22 withdrawn their -- or released their lis pendens. So  
23 there's a lot to talk to him about with regard to the  
24 filing of the proof of claim, the motivation, and  
25 everything else. And I've read the judge's

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1 instructions on this issue, and I believe I'm

2 completely within my rights to ask these questions.

3 And you really don't have to answer, because I

4 don't need you to answer. We're in a disagreement,

5 and I'm going to file the motion to compel. So I

6 do --

7 MR. BALLASES: (Unintelligible)

8 MS. HOOD: I do not -- I do not pass the

9 witness. I reserve my rights.

10 MR. CHOUDHRI: And --

11 MR. BALLASES: Thank you for telling me --

12 MR. CHOUDHRI: -- I would like to make the

13 record -- I would also like to make the record very

14 clear.

15 So the record is clear, Mr. Khawaja, are you

16 taking your attorney's -- are you following your

17 attorney's instructions, and are you going to refuse

18 to answer any questions asked by Lori Hood or by my --

19 or any questions that I may ask you?

20 MR. BALLASES: So no question's on the table,

21 Mr. Choudhri, so I think you're confused --

22 MR. CHOUDHRI: Mr. Ballases -- Mr. Ballases,

23 please --

24 (Crosstalk)

25 THE REPORTER: Sorry. Just --

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1 MR. CHOUDHRI: Hang on a second. I just  
2 want --

3 THE REPORTER: Sorry. One at a time, please.  
4 Thank you.

5 MR. CHOUDHRI: I just want to make sure that,  
6 Mr. Ballases, your client can affirm that he's taking  
7 your instructions, and he's not going to answer any  
8 questions, so we don't have to sit here and ask  
9 questions if your instructions are going to be for him  
10 to not answer any of my questions that I've properly  
11 cross-noticed this deposition on pursuant to the  
12 Court's order. I just want to make sure the record is  
13 clear that your client's not answering any questions  
14 that I may ask.

15 MR. BALLASES: For the record, the record is  
16 clear. I made the same objection that I made to  
17 Ms. Hood as to you. You are not a party. You do not  
18 have standing. You're not an attorney. This isn't a  
19 creditors' meeting. We are here to answer --

20 MR. CHOUDHRI: Okay --

21 MR. BALLASES: -- the debtor's questions about  
22 the proof of claim --

23 MR. CHOUDHRI: I'm --

24 MR. BALLASES: -- and that's it.

25 MR. CHOUDHRI: Okay. We have the audio of the

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1 order, oral ruling of Judge Robinson. I would like to  
2 play that at this point for the record. So, please,  
3 if we can play that for the record --

4 MR. BALLASES: That's not --  
5 (Crosstalk)

6 THE REPORTER: I'm --

7 MR. CHOUDHRI: Tammy or Gene, can y'all play  
8 that?

9 THE REPORTER: I'm sorry. Sorry. I have two  
10 people speaking at once. I can hear Mr. Ballases, and  
11 I can hear Mr. Choudhri. Could I please just get one  
12 speaker on the record at a time.

13 MR. CHOUDHRI: So I was speaking --

14 MR. BALLASES: That's not --

15 MR. CHOUDHRI: -- and --  
16 (Crosstalk)

17 THE REPORTER: Sorry.

18 MR. CHOUDHRI: So the quote from the ruling  
19 is -- and I'm quoting the judge (Reading:) I'm going  
20 to grant the motion as to the date and time of the  
21 examinations, and my order is going to be very simple.  
22 It's going to say that. It's also going to further  
23 order that the debtor and any creditor -- any other  
24 creditor, for that matter, that cross-noticed this  
25 deposition is permitted to take a deposition --

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1 -- participate. So I just want to be clear,  
2 Mr. Ballases. I want to give you one more chance so  
3 we can conclude --  
4 MR. BALLASES: It's not unclear --  
5 MR. CHOUDHRI: -- and complete the deposition.  
6 (Crosstalk)  
7 MR. CHOUDHRI: Can I finish?  
8 MR. BALLASES: You're being --  
9 MR. CHOUDHRI: Mr. --  
10 MR. BALLASES: You're being investigated  
11 (unintelligible). You're being investigated by the  
12 Department of Justice. You've been found by courts to  
13 file lawsuits for improper purposes and harassment.  
14 You're founded by courts and juries to have committed  
15 fraud and libel, and you were just, on Monday, held by  
16 Judge Norman to be a forger and a liar. So anything  
17 you say, I don't believe --  
18 MS. HOOD: How about if I -- how about if I  
19 say it?  
20 (Crosstalk)  
21 THE REPORTER: Sorry. I'm sorry. No --  
22 sorry. Sorry. I need one person speaking at a time.  
23 The record is not clear when I have multiple speakers.  
24 Thank you.  
25 MR. CHOUDHRI: So let me just respond,

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1 Mr. Ballases. First of all, you are supporting  
2 perjury. Okay? Mr. Ballases, your client has  
3 solicited --

4 MR. BALLASES: (Unintelligible)

5 MR. CHOUDHRI: -- solicited people -- so,  
6 please, all of this is all supported and solicited by  
7 your client, and we'll get to the bottom of it --

8 MR. BALLASES: (Unintelligible)

9 MR. CHOUDHRI: -- which is why your client  
10 doesn't want to answer questions. I understand that.

11 THE WITNESS: You'll be a great jailhouse  
12 lawyer.

13 MR. CHOUDHRI: This is proper --

14 THE REPORTER: I'm sorry --

15 MR. BALLASES: Can we start the next --

16 MR. CHOUDHRI: Sorry?

17 MR. BALLASES: -- deposition? Can we start --

18 MR. CHOUDHRI: Hold on.

19 MR. BALLASES: -- the next deposition --

20 THE WITNESS: You're going to be a great  
21 lawyer --

22 MR. BALLASES: -- if Mr. Sather doesn't have  
23 any more questions?

24 THE WITNESS: You'll be a great lawyer in  
25 jail, man.

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1 MR. CHOUDHRI: Okay. So -- so that's your

2 goal --

3 MR. BALLASES: (Unintelligible)

4 MR. CHOUDHRI: -- going around telling

5 people --

6 THE REPORTER: I'm sorry --

7 MR. BALLASES: -- let's jump to the next

8 witness --

9 MR. CHOUDHRI: Please --

10 THE REPORTER: I'm sorry. Sorry. Sorry. I

11 am not getting Mr. Ballases' words on the record.

12 Mr. Ballases, if you have something to say, I

13 need just one speaker at a time. I'm not getting

14 anything you're saying at this point.

15 MR. BALLASES: Okay. What I'm saying is --

16 MR. CHOUDHRI: Please, Mr. Ballases, go ahead.

17 MR. BALLASES: -- (unintelligible) remains the

18 same. And if Mr. Sather has more questions, we're

19 happy to answer them. If he doesn't, then let's go to

20 the next witness.

21 MR. CHOUDHRI: No, no. We're -- we're not --

22 we're not playing any games here. Please play the

23 audio from the Court's ruling. Let's do that right

24 now --

25 MR. BALLASES: Okay (unintelligible) --



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1 MR. CHOUDHRI: -- so the record is crystal  
2 clear.

3 THE WITNESS: This is getting ridiculous.

4 MR. BALLASES: I'm going to end the deposition  
5 if Mr. Sather doesn't have any more questions, and we  
6 can jump to --

7 MR. CHOUDHRI: You can't end the deposition --

8 (Crosstalk)

9 MR. CHOUDHRI: Unless all parties agree to go  
10 off the record, we stay on the record. That's the  
11 rule, Mr. Ballases. The rule applies to everyone.

12 Please play --

13 MR. BALLASES: (Unintelligible)

14 MR. CHOUDHRI: -- the audio --

15 (Crosstalk)

16 MR. CHOUDHRI: Please play the audio --

17 MR. BALLASES: I'm going to shut it down if  
18 you don't take control of your client in the  
19 deposition. Your choice, Mr. Sather.

20 MR. CHOUDHRI: I'm here as a creditor. We're  
21 going to play the audio --

22 MR. BALLASES: (Unintelligible) Okay.

23 MR. CHOUDHRI: Mr. --

24 MR. BALLASES: We're going to -- we're all  
25 ready to go forward with the next witness. We're

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1 here, and we're ready to go forward.

2 Mr. Sather, if you have more questions, let me

3 know, and he will stay and answer them.

4 MR. SATHER: I am adjourning the deposition --

5 MR. CHOUDHRI: I have the floor. I have the

6 floor. I'm a creditor. I've cross-noticed this

7 deposition. Please play --

8 MR. BALLASES: (Unintelligible)

9 MR. CHOUDHRI: -- the oral ruling from the

10 Court right now. Go ahead.

11 MR. BALLASES: Mr. Sather --

12 (Crosstalk)

13 (Audio file played.)

14 THE REPORTER: I'm sorry. Sorry. I -- I'm

15 sorry. Mr. McCubbin, I cannot hear anybody when I

16 have multiple speakers at once. I don't know if you

17 want this on the record, but it's going in as

18 crosstalk because it's not coming through clearly.

19 MR. CHOUDHRI: Yes, Madam Court Reporter.

20 MR. BALLASES: Mr. Sather --

21 MR. CHOUDHRI: I have the floor.

22 MR. BALLASES: -- (unintelligible) the

23 questioning --

24 MR. CHOUDHRI: Please stop interrupting,

25 Mr. Ballases.

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1 MR. BALLASES: -- (unintelligible) not going  
2 to the next witness.

3 MR. CHOUDHRI: I am -- I am making the record.  
4 Mr. Ballases, please let me speak, and please don't  
5 interrupt me. Okay? Please --

6 MR. BALLASES: Okay --

7 MR. CHOUDHRI: -- play the audio ruling of  
8 Judge Robinson --

9 MR. BALLASES: We're going to --

10 MR. CHOUDHRI: -- so it's clear on the record.  
11 Go ahead.

12 (Audio file played.)

13 MR. CHOUDHRI: No, we're -- we're --

14 (Audio file continues playing.)

15 MR. MCCUBBIN: He just said any other  
16 creditor (unintelligible) --

17 THE REPORTER: I'm sorry, Mr. McCubbin. You  
18 just cut out for a second.

19 MR. MCCUBBIN: He just said --

20 MR. CHOUDHRI: Go and play that,  
21 Mr. McCubbin --

22 MR. MCCUBBIN: -- any other creditor --

23 MR. CHOUDHRI: -- just so the record is clear.  
24 Please go ahead --

25 MR. MCCUBBIN: The judge just stated any other

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1 creditor. I can replay it.

2 MR. CHOUDHRI: Please replay it for the record

3 so the record is crystal clear, and it's the judge --

4 So, Madam Court Reporter, so the record is  
5 clear, we are about to begin playing the oral ruling  
6 of Judge Robinson.

7 THE REPORTER: Okay. So are you wanting me to  
8 transcribe --

9 MR. CHOUDHRI: Yes.

10 THE REPORTER: -- this audio into the record?

11 MR. CHOUDHRI: Yes. Yes, Madam Court  
12 Reporter. He's about -- we're about to play the  
13 judge's ruling -- oral ruling on the record so that  
14 way we can have a simple and clean completion of this  
15 deposition and end this shenanigan and argument with  
16 Mr. Ballases.

17 Please, Mr. -- please, sir, please proceed  
18 with the record -- the audio ruling of Judge Robinson.  
19 Go ahead.

20 (Audio file played.)

21 THE REPORTER: I'm sorry. Sorry --

22 (Audio file continues playing.)

23 THE REPORTER: Sorry. The audio is not clear.  
24 The audio is not crystal clear. I hear Mr. Sather  
25 responding on the audio, and it's not clear.

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1 Typically in a transcript, we do not  
2 transcribe audio played.

3 MR. BALLASES: And I'm going to object --

4 MR. CHOUDHRI: Time out.

5 MR. BALLASES: I'm objecting --

6 MR. CHOUDHRI: We're going to e-mail you --  
7 Court Reporter, we're going to e-mail you this audio  
8 right now, and he's going to adjust the volume and  
9 play it again.

10 Go ahead. Play it again, please.

11 And, Court Reporter, let us know if you're  
12 getting a clear --

13 MR. BALLASES: Mr. Sather --

14 MR. CHOUDHRI: -- read on it. Okay?

15 MR. BALLASES: -- take control of the depo.  
16 This is a waste of time. It's a waste of the client's  
17 time --

18 MR. CHOUDHRI: Mr. Ballases, please -- please  
19 stop talking.

20 MR. BALLASES: -- (unintelligible) control of  
21 the deposition --

22 MR. CHOUDHRI: I have the floor --

23 MR. SATHER: You don't have it yet,  
24 Mr. Choudhri.

25 (Crosstalk)

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1 MR. BALLASES: Let's just jump to the next  
2 witness. I'm not allowing the questions to be asked.  
3 So it's not going to change. We're just wasting  
4 time --

5 MR. CHOUDHRI: We're playing the oral ruling  
6 of Judge Robinson. Please, Mr. Ballases, be quiet so  
7 we can play the ruling of Judge --

8 MR. BALLASES: (Unintelligible)

9 MR. CHOUDHRI: -- Judge Robinson's ruling.

10 MR. BALLASES: (Unintelligible) we're not  
11 going to play -- we're not -- that's not how  
12 depositions work, Mr. Choudhri. I'm sorry you like to  
13 play an attorney --

14 MR. CHOUDHRI: Well, please --

15 MR. BALLASES: -- but that's not how this  
16 works. So either I'm going to --

17 MR. CHOUDHRI: No. No, no. Please stop.

18 MR. BALLASES: Again, I'm going to get off --  
19 if you'd like to have another -- if you'd like to ask  
20 questions of my other clients, I'm happy to do that,  
21 and you're happy to ask questions, Mr. Sather. But  
22 these shenanigans are not --

23 MR. CHOUDHRI: If your --

24 MR. BALLASES: -- going to happen.

25 MR. CHOUDHRI: -- responses, Mr. Ballases, is

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gonna -- the shenanigans are yours, Mr. Ballases. If your responses are gonna be the same and you're not going to allow cross-notice creditors who are here, want to ask questions, then let's clarify this right now so we can complete the deposition properly, Mr. Ballases. Please don't obstruct the discovery right now.

Go ahead and play the oral ruling of Judge Robinson.

MR. BALLASES: I'm going to object --  
(Audio file played.)

THE REPORTER: I'm sorry. I'm sorry. I cannot hear when Mr. Ballases is speaking --

MR. CHOUDHRI: Mr. Ballases --

THE REPORTER: I need one person --

MR. CHOUDHRI: Mr. Ballases --

THE REPORTER: -- at a time.

MR. CHOUDHRI: -- intentionally --

Mr. Ballases intentionally interferes, interrupts when we play the ruling of Judge Robinson that is gonna clarify this issue that cross-notice creditors are not allowed to participate and ask questions.

So please play the ruling of Judge Robinson.

And, Mr. Ballases, please refrain and be quiet, because the court reporter cannot take

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1 different people talking at the same time.

2 So please play the audio of Judge Robinson.

3 THE REPORTER: Sorry --

4 MR. CHOUDHRI: Go ahead.

5 THE REPORTER: Sorry. One second, please,  
6 before you play it.

7 Mr. Sather, this is your deposition  
8 transcript. Normally if I can't hear, I can't  
9 transcribe what's being said. It would need to be  
10 transcribed separately, because I'm not transcribing  
11 this on the record right now if I cannot hear it  
12 clearly.

13 MR. SATHER: All right. If you're unable to  
14 hear it clearly, I suggest that we move on. The judge  
15 said what he said. I do have one more question for --

16 MR. CHOUDHRI: Hold on, Mr. Sather. Just one  
17 second, please, before we conclude anything here. I  
18 do want to take a break before we do conclude  
19 anything, but I want to play this, and I think he can  
20 do it a little bit louder.

21 Let's try if you can hear it again. Ms. Court  
22 Reporter, let's try one more time.

23 MR. BALLASES: (Unintelligible)

24 MR. CHOUDHRI: Go ahead. Play the recording.

25 THE REPORTER: I'm sorry. Mr. Ballases --



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1 MR. BALLASES: The court reporter is saying  
2 (unintelligible).

3 THE REPORTER: I'm sorry. Mr. Ballases, could  
4 you please repeat that?

5 MR. BALLASES: Sure. I just was telling  
6 Mr. Choudhri that you have instructed him you cannot  
7 take it down in this manner, and so I'm just trying to  
8 tell him that he's wasting more time.

9 Mr. Sather --

10 MR. CHOUDHRI: Mr. Ballases, that's not what  
11 she said.

12 MR. BALLASES: -- if you want to go --

13 MR. CHOUDHRI: Mr. Ballases, we're going to  
14 try for her to hear it. Okay?

15 MR. BALLASES: Okay. Call us when you're  
16 ready --

17 MR. CHOUDHRI: So she's being very cooperative  
18 and polite.

19 Please, Mr. Ballases, be quiet.

20 Go ahead, Mr. -- sir. Please play the -- play  
21 the audio for the judge's ruling.

22 (Audio file played.)

23 MR. MCCUBBIN: He said, And any other  
24 creditor.

25 MR. CHOUDHRI: Can you please --

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1 MR. SATHER: Madam Reporter --

2 MR. CHOUDHRI: Please play the -- please play  
3 the whole recording.

4 MR. MCCUBBIN: The recording is starting --

5 MR. SATHER: Okay. Stop. Stop.

6 Madam Reporter, were you able to get the last  
7 excerpt?

8 MR. BALLASES: Ms. Court Reporter, you told us  
9 you couldn't take anything down in that manner. It'd  
10 have to be transcribed by the person who noticed the  
11 deposition, Mr. Sather. I assume you're going to  
12 stick by what you stated earlier.

13 THE REPORTER: Okay. It's not crystal clear.  
14 And because it's being played, I'm not sure where the  
15 audio and where it is stopping.

16 MR. CHOUDHRI: Well, let's take a five-,  
17 ten-minute break. Let's e-mail it to you, Madam Court  
18 Reporter, and so we can be efficient, and that way we  
19 don't have to interrupt the deposition and come back a  
20 different day and go seek court intervention. We can  
21 save the Court's time and not bother the Court.

22 But if Mr. Ballases insists that we have to  
23 bother the Court, then we'll seek emergency relief  
24 from the Court. But why don't we go ahead and e-mail  
25 you right now.

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1 And let's not allow anybody to bully anybody  
2 here. So, Mr. Ballases, please don't put words in her  
3 mouth.

4 So let's go ahead and take -- because at this  
5 point, this is -- I've cross-noticed the depo, and I  
6 want the record to be clear. If Mr. Ballases is going  
7 to continue to not allow questions despite the order  
8 by the judge being shown and heard for him -- so the  
9 record is clear. But we'll go ahead and take a --  
10 let's go and take a ten-minute break.

11 Madam Court Reporter, we're going to e-mail  
12 you the audio oral ruling of Judge Robinson so we can  
13 have a smooth deposition and complete discovery, and  
14 no one can obstruct this process. Okay? So can you  
15 provide your e-mail address, Madam Court Reporter,  
16 just so I have it?

17 MR. BALLASES: Mr. Sather, are we moving on to  
18 the next witness?

19 MR. SATHER: Yeah, I don't think this is  
20 productive. Mr. Ballases has indicated that he is not  
21 going to allow you to ask questions regardless of what  
22 the Court ruled, and so it is my intent at this time  
23 to adjourn the deposition subject to any future  
24 rulings from Judge Robinson. If Judge Robinson  
25 allows --

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1 MR. CHOUDHRI: Well --

2 MR. SATHER: -- the other parties to ask  
3 questions, I may have -- I reserve the right to ask  
4 follow-up questions.

5 MR. CHOUDHRI: So -- so I --

6 MR. BALLASES: Would you like to ask --

7 MR. CHOUDHRI: No, no. Hold --

8 MR. BALLASES: Would you like to proceed --  
9 (Crosstalk)

10 THE REPORTER: I'm sorry. I can't --

11 MR. BALLASES: -- with Osama Abdullatif or  
12 John Quinlan next?

13 THE REPORTER: Mr. Ballases -- sorry --

14 MR. CHOUDHRI: Hang on a second.

15 THE REPORTER: -- Mr. Ballases --

16 MR. CHOUDHRI: I have --

17 THE REPORTER: -- could you --

18 MR. CHOUDHRI: -- contacted the Court. I'll  
19 be e-mailing the Court right now. We are not  
20 suspending this deposition. I want to go ahead and  
21 pause the deposition. We are going to contact the  
22 Court. Okay?

23 Madam Court Reporter, would you give us your  
24 e-mail address, please?

25 THE REPORTER: And I just want to note,

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1 Mr. Ballases, I did not get anything you just said as  
2 you were speaking at the same time as Mr. Choudhri.

3 So do you have anything to put on the record?

4 MR. BALLASES: Myself, me?

5 THE REPORTER: Yes. I did not get what you  
6 were saying while -- after what Mr. Sather said.

7 MR. BALLASES: Sure. I just asked Mr. Sather  
8 if we're ready to move to the next witness. I think  
9 he indicated he was before Mr. Choudhri interrupted.  
10 And so that's all I'm asking.

11 MR. CHOUDHRI: So --

12 MR. BALLASES: Do we want to move to the next  
13 witness, Steve?

14 MR. CHOUDHRI: So this part is -- at this  
15 moment, I'd like to e-mail the court reporter the  
16 judge's oral ruling, and let's take a 15-minute break.  
17 And I've already reached out to the Court. The Court  
18 has asked for us to e-mail the Court for relief so we  
19 can complete the deposition and not waste the Court's  
20 time or disrupt the deposition and have to come back a  
21 different day. Everybody's schedules are -- are very  
22 important.

23 Mr. Ballases, in the event we are able to  
24 resume or reschedule the deposition, can you provide  
25 us dates?

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1 MR. BALLASES: Steve, can we move on? Can you  
2 control your client to any degree? I mean --

3 MR. SATHER: Mr. Choudhri --

4 MR. CHOUDHRI: I'm not his client.

5 MR. SATHER: -- is not my client in his  
6 individual capacity, and therefore --

7 MR. BALLASES: I understand he's a principal  
8 of Texas REIT, the debtor.

9 MR. SATHER: He's also asserting his right to  
10 appear as a pro se creditor and that I do not have any  
11 control over that capacity. If he wishes to contact  
12 the Court, that is his business.

13 MR. BALLASES: I understand that, but you've  
14 noticed the deposition. Do we want to proceed with  
15 the next witness? I've got my --

16 MR. CHOUDHRI: And we --

17 MR. BALLASES: -- clients here. We've  
18 rearranged our schedules for you. Do you want to take  
19 the deposition or not? It's up to you, Steve.

20 MR. SATHER: I want to proceed --

21 MR. CHOUDHRI: We are resuming. We are  
22 pausing the deposition, and we're going to have a  
23 conversation, and we'll come back in 15 minutes on the  
24 record.

25 But in the meantime, Court Reporter, can I

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1 have your e-mail address so we can e-mail you the  
2 audio ruling of the judge? And I think that'll solve  
3 any issues and resolve the -- the objection or  
4 position that Mr. Ballases is taking that the judge  
5 said something the judge didn't say, so it's clear.  
6 If I can get your e-mail address, we can e-mail you  
7 the audio right now, and we can resume.

8 Let's -- let's resume the deposition at noon.  
9 It's 11:40 right now.

10 THE REPORTER: Okay. May I go off the record,  
11 please? If we're pausing?

12 MR. CHOUDHRI: Please.

13 MR. SATHER: Yes, you may. Yes.

14 MR. BALLASES: Yes, you can go off the record.

15 THE REPORTER: Okay. So I am off the record.

16 (Discussion held off the record.)

17 (A recess was taken.)

18 THE REPORTER: Back on the record.

19 MR. BALLASES: So this is Michael Ballases,  
20 counsel for John Quinlan, Omar Khawaja, and Osama  
21 Abdullatif. There is no written order, but I did  
22 listen to the recording, and it appears he did say  
23 "creditors." And so I was mistaken, and so I will  
24 allow creditors to ask questions, however, in the  
25 limited capacity that he stated in the oral hearing.

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1 So we can go forth with Mr. Khawaja.

2 Ms. Hood, if you want to ask questions, go for  
3 it.

4 MS. HOOD: Thanks. Okay. Steve, I may use  
5 your exhibits, so if you can have those by the --

6 MR. SATHER: I'm happy to --

7 MS. HOOD: -- by the ready for me, I  
8 appreciate it.

9 MR. SATHER: -- put them up on the screen if  
10 you need them.

11 MS. HOOD: Thank you.

12 BY MS. HOOD:

13 Q. Mr. Khawaja, my name is Lori Hood. We've  
14 never met before; correct?

15 A. That's correct.

16 Q. And I understand that you are an attorney  
17 licensed in the state of Texas; correct?

18 A. That's also correct.

19 MR. BALLASES: Objection. Form.

20 Q. (BY MS. HOOD) And do you practice law?

21 A. Yes, ma'am.

22 MR. BALLASES: Objection. Form.

23 Q. (BY MS. HOOD) And do you have -- where do you  
24 practice law?

25 MR. BALLASES: Objection --



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1 A. At my own law firm.

2 Q. (BY MS. HOOD) And what is the name of that  
3 law firm?

4 A. The Law Offices of -- and my name.

5 Q. And where is that? Where are your offices  
6 located?

7 MR. BALLASES: Objection. Form.

8 A. On Richmond and Sage.

9 MS. HOOD: If you'll -- thanks, Steve. Can  
10 you scroll down, Steve?

11 MR. SATHER: Certainly.

12 Q. (BY MS. HOOD) In the proof -- if I understand  
13 your testimony correctly, you stated that your proof  
14 of claim is based upon some judgments that you had  
15 assigned to you by virtue of purchasing those  
16 judgments from third parties; is that correct?

17 MR. BALLASES: Objection. Form.

18 A. Yes.

19 MS. HOOD: Mr. Ballases, what is the basis of  
20 your objection?

21 MR. BALLASES: Asked and answered. We've gone  
22 through all this.

23 MS. HOOD: And I understand that,  
24 Mr. Ballases, but you were objecting quite frequently  
25 to Mr. Sather's questions, and I just want to make

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1 sure that the record is clear with regard to what your  
2 objection is. I didn't know what your objection was  
3 during his questioning, and so I'm just trying to make  
4 sure that if the question needs to be rephrased or has  
5 come out at a different angle, that the question is  
6 clear to your client and that we're not going to deal  
7 with objections in the transcript later on. Is that  
8 fair?

9 MR. BALLASES: I'm going to make my objections  
10 according to the rules. You can respond how you think  
11 appropriate pursuant to the rules.

12 MS. HOOD: Okay. I appreciate that.

13 Oops. What's that? No, take that down.

14 MR. SATHER: Sorry.

15 Q. (BY MS. HOOD) All right. So -- okay. So  
16 this proof of claim is your individual proof of claim;  
17 is that correct?

18 A. My individual proof of claim? It looks like  
19 my name is on there as well as Mr. Quinlan's and  
20 Mr. Abdullatif's.

21 Q. Right. But this isn't a proof of claim you  
22 filed on behalf of your law office; correct?

23 A. Oh, yeah. Yeah, that's filed on my behalf,  
24 correct. Mm-hmm.

25 Q. And if I understand your testimony, the value

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1 of the property that is included in Section 9 consists  
2 of the total of the three judgments that form the  
3 basis of your proof of claim; correct?

4 A. That's right.

5 Q. And you've used these three judgments as the  
6 basis for filing an adversary action in the Southern  
7 District but also attached the adversary action to  
8 your proof of claim; is that correct?

9 A. That sounds correct.

10 Q. Okay. So if I can drill down, we've got --  
11 the basis for your proof of claim was, one, three  
12 judgments and, two, an adversary action; is that  
13 correct?

14 A. That sounds correct.

15 Q. All right. And the basis of the adversary  
16 action were the three judgments; is that correct?

17 MR. BALLASES: Objection. Form.

18 A. Sorry. Can you repeat the question?

19 Q. (BY MS. HOOD) Yeah. The basis of your  
20 adversary action is the three judgments that you claim  
21 you're unable to collect; is that correct?

22 A. That's correct.

23 MR. BALLASES: I'm going to object to form.

24 MS. HOOD: And what is the basis of your  
25 objection?

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1 MR. BALLASES: I think it's vague and  
2 ambiguous and misstates the evidence. I mean, the  
3 petition or the complaint speaks for itself.

4 MS. HOOD: So last time I checked, documents  
5 don't talk. So let me correct my question just to  
6 make it clear.

7 Q. (BY MS. HOOD) Mr. Khawaja, in your adversary  
8 action which is attached to your proof of claim, you  
9 reference three judgments; is that correct?

10 A. Yes.

11 Q. And you testified earlier, when Mr. Sather was  
12 asking you questions, that the reason you brought the  
13 adversary action was your inability to collect on  
14 those judgments and that somehow all of these related  
15 entities are alter egos of Mr. Choudhri; correct?

16 A. Yes.

17 Q. Okay. Let me drill down on the judgments.  
18 You state that you're an assignee of two of  
19 these judgments; is that correct?

20 A. That's correct.

21 MR. BALLASES: Objection. Form.

22 MS. HOOD: All right. What is the basis of  
23 your objection?

24 MR. BALLASES: Asked and answered. This has  
25 been already discussed and answered clearly by

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1 Mr. Sather.

2 MS. HOOD: Okay. I disagree --

3 MR. BALLASES: You're just rehashing --

4 MS. HOOD: -- but -- okay. Let me finish.

5 Q. (BY MS. HOOD) You have --

6 MS. HOOD: Steve, can you go to the basis of  
7 the damages that were attached? And thank you for  
8 being my paralegal. I appreciate it.

9 Q. (BY MS. HOOD) All right. So Judgment  
10 Number 1, you have an assigned interest in; correct?

11 A. Yes.

12 MR. BALLASES: Objection. Form.

13 Q. (BY MS. HOOD) Before you purchased your  
14 assignment, did you do any due diligence on the  
15 underlying pleadings in the case?

16 MR. BALLASES: Objection. Form.

17 A. Yes.

18 Q. (BY MS. HOOD) And because you did underlying  
19 due diligence in the case, you understand that nowhere  
20 in that case is there any allegation of fraudulent  
21 transfer; correct?

22 A. In which case?

23 Q. Judgment Number 1, Davy versus Heil.

24 A. I mean, I didn't get into the facts of that  
25 case. There's a final judgment, I purchased it, and

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1 it was assigned to me. Why do I care what happened in  
2 that case?

3 Q. Okay. Well, I just asked you if you looked at  
4 the underlying pleadings in the case, and you said  
5 yes. So now your testimony is that you did not look  
6 at the underlying pleadings.

7 A. I mean, I skimmed through them.

8 Q. And as you were skimming through them, did you  
9 understand that there was no cause of action for  
10 fraudulent transfers?

11 A. I don't recall.

12 Q. Have you read the judgment?

13 A. Yes, I have.

14 Q. And did you read it before you purchased it?

15 A. Yes, I did.

16 Q. And do you understand that nowhere in that  
17 judgment is there a finding of fraudulent transfers?

18 A. Okay. If you say so.

19 Q. Well, no, I'm asking you if you've read it and  
20 if you understand that.

21 MR. BALLASES: Objection. Form.

22 A. I mean, if there isn't, I'm gonna take your  
23 word for it and say there isn't.

24 Q. (BY MS. HOOD) Okay. Well, take my word for  
25 it. There isn't.

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1 Did you purchase this judgment at a discount?

2 MR. BALLASES: Objection. Form.

3 A. I don't recall.

4 MS. HOOD: What's the basis for your  
5 objection?

6 MR. BALLASES: Lacking relevance. The purpose  
7 of the deposition is to understand why the proof of  
8 claim was filed and why it is now being withdrawn.

9 MS. HOOD: All right. Well, I think --  
10 (Crosstalk)

11 MR. BALLASES: (Unintelligible) an underlying  
12 matter in the Southern District.

13 MS. HOOD: All right. I disagree with your  
14 analysis, but we can argue that another day.

15 Q. (BY MS. HOOD) So you don't recall how much  
16 you purchased the judgment for.

17 A. Correct.

18 Q. And you are one of three assignees of this  
19 judgment; correct?

20 A. That's correct.

21 MR. BALLASES: Objection. Form.

22 Q. (BY MS. HOOD) Before you purchased the  
23 judgment, did you have an agreement with the other two  
24 claimants, Mr. Quinlan and Mr. Abdullatif, as to why  
25 you were purchasing the judgment?

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1 MR. BALLASES: Objection. Form.

2 A. Did I have an agreement as to why we were  
3 purchasing the judgment? I mean, the purpose of  
4 purchasing the judgment is to collect on a judgment,  
5 so that was the agreement.

6 Q. (BY MS. HOOD) So you sat down with the other  
7 two gentlemen, and the three of you decided to  
8 purchase this judgment together.

9 A. I don't recall if we sat down together  
10 anywhere and had that -- a sit-down discussion about  
11 what was gonna happen. I think maybe that did.

12 Q. Maybe it did, or maybe it didn't?

13 A. Yeah. Maybe it was a phone call; maybe it was  
14 a sit-down meeting.

15 Q. When did you --

16 MR. BALLASES: And just for the record --

17 Q. (BY MS. HOOD) Can you tell us when the  
18 judgment --

19 MR. BALLASES: Just so that I have --

20 THE REPORTER: I'm sorry. I'm sorry.

21 MS. HOOD: Sorry.

22 THE REPORTER: I hear somebody else speaking.

23 MR. BALLASES: Sure. I just -- I wanted to  
24 caution Ms. Hood.

25 You're getting real close to attorney-client



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1 privilege and/or work product legal privilege. So I  
2 don't think you're there yet, but you're close, so I  
3 just wanted to warn you to keep that in mind.

4 Q. (BY MS. HOOD) Sure. And, Mr. Khawaja, please  
5 understand that I don't want to know what you talked  
6 about with your lawyers, okay, ever, or what your  
7 lawyers have discussed with you regarding their  
8 strategy. Okay? So if you feel like you have to  
9 reveal that kind of information in response to my  
10 question, I don't want to know that stuff. Okay?

11 And certainly you understand as a lawyer that  
12 you have the right to discuss this kind of response  
13 with your lawyer prior to answering; right?

14 A. Yes.

15 Q. Can you tell us when you -- when you purchased  
16 the judgment?

17 A. Sometime before this proof of claim was filed.  
18 I don't recall exactly when, no.

19 Q. Do you recall the year?

20 A. I think it was --

21 MR. BALLASES: Objection. Form.

22 A. I think it was 2023.

23 Q. (BY MS. HOOD) And how did it come about that  
24 this judgment came across your desk to be purchased?

25 MR. BALLASES: Objection. Form.

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1 Q. (BY MS. HOOD) You can answer.

2 A. I mean, that's -- that's privileged

3 information that I'm not gonna discuss.

4 MR. BALLASES: I'll go ahead and assert the  
5 attorney work product, attorney-client privilege. I'm  
6 going to instruct him not to answer.

7 Q. (BY MS. HOOD) How do you typically learn of  
8 judgments that are available for you to purchase?

9 A. I would say typically it is something that's  
10 brought to my attention by a third party.

11 Q. And which third party brought this particular  
12 judgment to your attention?

13 MR. BALLASES: Objection. Form. Assertion of  
14 attorney-client and work product legal privileges.  
15 Instruct client not to answer.

16 Q. (BY MS. HOOD) Did Mr. Abdullatif bring this  
17 judgment to your attention?

18 MR. BALLASES: Same assertion of privilege,  
19 same instruction to the client not to answer. It  
20 violates attorney-client and attorney work product.

21 Q. (BY MS. HOOD) Mr. Khawaja, do you have any  
22 sort of agreement with Mr. Abdullatif or Mr. Quinlan  
23 regarding a joint prosecution of this proof of claim?

24 A. We do.

25 Q. And is that in writing?

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1 MR. BALLASES: Also joint litigation

2 privilege, I'll assert.

3 Q. (BY MS. HOOD) Okay.

4 A. I'm not gonna answer.

5 Q. Is your -- is your agreement in writing?

6 MR. BALLASES: Instruct client not to answer.  
7 He doesn't need to give work product, attorney-client,  
8 or joint litigation privilege information away.

9 Q. (BY MS. HOOD) Back to my question.  
10 Mr. Khawaja, do you have an agreement in writing with  
11 Mr. Abdullatif and Mr. Quinlan with regard to pursuing  
12 this proof of claim?

13 MR. BALLASES: I'm going object again to the  
14 question and assert the legal privileges of  
15 attorney-client, work product, also joint litigation  
16 privilege and instruct the client not to answer.

17 Q. (BY MS. HOOD) Mr. Khawaja, are you adhering  
18 to your -- to your counsel's instruction?

19 A. I am.

20 Q. And refusing to answer my question?

21 A. On advice of counsel, yes.

22 Q. With regard to this particular Davy-Heil  
23 judgment, do you know Mr. Heil?

24 A. I don't.

25 Q. Do you know Mr. Oakum?

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1 A. I don't.

2 Q. Do you know Renee Davy?

3 A. Not personally.

4 Q. Not personally? How else would you know her?

5 A. I've seen videos of her online.

6 Q. Doing what?

7 A. Stating that Mr. Choudhri's a fraud and a

8 thief and shouldn't be trusted.

9 Q. Have you ever spoken to her?

10 A. I have not.

11 Q. When you purchased this judgment, who did you

12 pay?

13 MR. BALLASES: Objection. Form.

14 I'm going to also -- it's harassing and

15 oppressive. I'm also going to assert the

16 attorney-client, attorney work product, and joint

17 litigation privilege and instruct the client not to

18 answer.

19 Q. (BY MS. HOOD) Mr. Khawaja, are you going to

20 follow your attorney's instruction and not answer my

21 question?

22 A. I am.

23 Q. When you guys purchased your assignment of

24 this judgment, the Davy-Heil judgment, did you each

25 provide separate payment, or did it come from one

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1 source?

2 MR. BALLASES: I'm going to assert the same  
3 objection and the same assertions of legal privilege  
4 and instruct the client not to answer, as I did to the  
5 question before.

6 Q. (BY MS. HOOD) Mr. Khawaja, are you going to  
7 follow your counsel's instruction and refuse to answer  
8 my question?

9 A. I am.

10 Q. Mr. Khawaja, when you purchased your interest  
11 in this judgment, did you purchase it via wire  
12 transfer or a check? Cash? How did you purchase it?

13 MR. BALLASES: I'm going to assert the same  
14 legal objections and the same assertions of legal  
15 privilege and instruct client not to answer, as I did  
16 with the previous question.

17 Q. (BY MS. HOOD) Mr. Khawaja, are you going to  
18 adhere to your client's (sic) instruction and refuse  
19 to answer my question?

20 A. My counsel's. Yes, I am.

21 Q. Mr. Khawaja, do you know a gentleman by the  
22 name of Wayne Dolcefino?

23 A. I've seen him online.

24 Q. And was it one of Mr. Dolcefino's videos in  
25 which Ms. Davy appeared?

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1 A. I think so, yes.

2 MR. BALLASES: Objection. Form.

3 Q. (BY MS. HOOD) Have you ever met

4 Mr. Dolcefino?

5 A. I've met him, yes.

6 MR. BALLASES: Objection --

7 Q. (BY MS. HOOD) In connection with any of your

8 cases related to Mr. Choudhri?

9 A. No.

10 MR. BALLASES: Objection. Form.

11 Q. (BY MS. HOOD) With regard to this Judgment

12 Number 1 that was assigned to you, how much of -- how

13 much do you own of this judgment?

14 THE WITNESS: I think that goes to the

15 privilege again.

16 MR. BALLASES: I'm going to object to the

17 question as being oppressive and harassing and assert

18 the attorney-client, attorney work product, and joint

19 litigation privilege and instruct him not to answer.

20 Q. (BY MS. HOOD) Mr. Khawaja, are you going to

21 adhere to your lawyer's instruction not to answer my

22 question?

23 A. I am.

24 Q. As you sit here today, you're not going to

25 tell me how much of this \$501,513.85 judgment that you

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own.

MR. BALLASES: Objection. Form.

A. On advice of counsel, I will not answer that question.

Q. (BY MS. HOOD) And you testified that you purchased this judgment sometime last year; correct?

MR. BALLASES: Objection. Form.

A. I believe so, yes.

Q. (BY MS. HOOD) Okay. And what have you done to try and collect this judgment?

A. Well, we filed --

MR. BALLASES: Objection. Form.

A. -- in Bankruptcy Court or, I guess, in our proof of claims. And I think -- I think that's it at this stage.

Q. (BY MS. HOOD) Have you filed any post-judgment discovery in the underlying lawsuit in the 152nd?

A. I don't -- I don't -- I'm not aware of that.

Q. Have you hired a lawyer to pursue post-judgment discovery or collection of this judgment?

A. The only lawyer I've hired is Mr. Ballases.

Q. And you're certainly not aware of Mr. Ballases doing anything to try to collect this judgment outside

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1 of the bankruptcy action; correct?

2 MR. BALLASES: Objection. Form.

3 Q. (BY MS. HOOD) You can answer.

4 A. I'm not aware.

5 Q. As an attorney in the state of Texas,  
6 certainly you're aware of the fact that, as a judgment  
7 creditor, you have the right to pursue post-judgment  
8 collection efforts within the confines of the Court  
9 that issued the judgment; correct?

10 A. Sure.

11 Q. And you've chosen not to avail yourselves of  
12 those opportunities; correct?

13 MR. BALLASES: I'm going to go ahead and  
14 object to the question as misleading, also oppressive  
15 and harassing, and assert attorney-client, attorney  
16 work product, and joint litigation privilege.

17 What we do for collection, you do not get to  
18 ask about to aid Mr. Choudhri and Jetall and his  
19 companies to hide assets any further. So we're not  
20 going to answer that.

21 MS. HOOD: All right. I object to any  
22 commentary about me helping anybody do anything. All  
23 right? I'm here representing a creditor, and I'm  
24 trying to determine the basis for the filing of this  
25 proof of claim. And part of that issue is any attempt



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1 by the judgment creditor to collect the judgment  
2 outside of filing a proof of claim in a bankruptcy  
3 action, that has nothing to do with the underlying  
4 judgment.

5 Q. (BY MS. HOOD) Mr. Khawaja, do you personally  
6 know of any action taken in the public forum by you to  
7 collect this judgment outside of this bankruptcy  
8 action?

9 A. I'm not aware of any.

10 MR. BALLASES: I'm further going to instruct  
11 you: Don't answer any more questions regarding what  
12 we've done to collect because that gets into attorney  
13 work product, also attorney-client, and joint  
14 litigation privilege.

15 THE WITNESS: I understand.

16 MS. HOOD: And certainly, Mr. Ballases, I  
17 appreciate the nuances and everything else. And  
18 again, I don't want to know anything about your  
19 strategy or anything else. That's why I asked for  
20 public record, because I can't find anything in the  
21 public record that shows any attempt to try to collect  
22 this judgment. And so I'm just trying to clarify and  
23 get commentary and testimony from your client  
24 confirming that.

25 MR. BALLASES: I appreciate that, but we don't

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1 need to get into anything that could aid your client  
2 or the principal who owns your client to hide assets  
3 any further.

4 MS. HOOD: I'm going to object to the sidebar  
5 commentary there.

6 Q. (BY MS. HOOD) The judgment that you bought,  
7 the judgment debtor is Jetall Companies, Inc.;  
8 correct?

9 A. Correct.

10 Q. Certainly that judgment does not include my  
11 client as a judgment debtor; correct?

12 A. Yeah, it's not -- does not include? Correct.

13 Q. It certainly doesn't include Mrs. Choudhri as  
14 a judgment debtor; correct?

15 A. It does not include them as a judgment debtor,  
16 correct.

17 Q. It doesn't include Texas REIT as a judgment  
18 debtor either; right?

19 A. Correct.

20 Q. On Judgment Number 2, I think you testified  
21 that you don't own any part of that judgment; correct?

22 A. Judgment Number 2, I believe I do own part of  
23 it.

24 Q. The Abdullatif judgment?

25 A. Okay. No, I do not. Sorry.

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1 Q. Okay. Are you aware of the fact that that  
2 judgment has been bonded around?

3 A. I'm not aware of --

4 MR. BALLASES: Objection. Form.

5 A. I'm not aware of that.

6 Q. (BY MS. HOOD) And when you filed the proof of  
7 claim that included Judgment Number 2, did you do any  
8 due diligence on that judgment in order to satisfy  
9 yourself that that judgment was not bonded around?

10 MR. BALLASES: Objection. Form.

11 A. I -- minimally, not -- minimally.

12 Q. (BY MS. HOOD) What do you mean "minimally"?

13 A. Meaning it was a final judgment, and that's  
14 how I -- that was what I understood it to be.

15 Q. Certainly as a lawyer in the state of Texas,  
16 you understand that when a judgment is superceded,  
17 that that stays any collection activities; correct?

18 MR. BALLASES: I'm going to object to the  
19 question as misleading and harassing and oppressive.

20 Q. (BY MS. HOOD) You can answer --

21 A. I'm not aware of that --

22 Q. You're not aware of that?

23 A. I'm not aware of that being -- I'm not aware  
24 of the judgment being superceded.

25 Q. And did you take any independent actions to

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1 determine whether or not this judgment, which is on  
2 appeal, had been superceded?

3 A. No.

4 Q. Judgment Number 3, this HSLLP judgment.

5 A. Yes.

6 Q. All right. That judgment, when did you  
7 purchase that judgment?

8 A. I think 2023, if I recall correctly.

9 Q. And how did you become aware that that  
10 judgment was available to purchase?

11 MR. BALLASES: Objection. Form. Harassing  
12 and oppressive. I'm also going to assert  
13 attorney-client, attorney work product, and joint  
14 litigation privilege and instruct the client not to  
15 answer.

16 Q. (BY MS. HOOD) Mr. Khawaja, are you going to  
17 adhere to your client's -- excuse me -- to your  
18 lawyer's instructions?

19 A. I am.

20 Q. And if I understand your testimony, you are  
21 one of three owners also of this judgment; is that  
22 correct?

23 MR. BALLASES: Objection. Form.

24 A. That's correct.

25 Q. (BY MS. HOOD) And can you tell me how you

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1 paid for the purchase of this judgment?

2 MR. BALLASES: I'm going to object to the  
3 question again as harassing and oppressive, assert the  
4 attorney-client legal privilege, the work product  
5 legal privilege, and the joint litigation legal  
6 privilege and instruct the client not to answer.

7 Q. (BY MS. HOOD) Mr. Khawaja, are you going to  
8 adhere to your lawyer's instruction?

9 A. Yes.

10 Q. Mr. Khawaja, can you tell me whether you paid  
11 for -- excuse me. Strike that.

12 Can you tell me who you paid when you  
13 purchased this assignment of this judgment?

14 MR. BALLASES: I'm going to assert the same  
15 objection I just levied to the prior question as well  
16 as the same assertion of legal privileges to the prior  
17 question and instruct the client not to answer, just  
18 like the prior question.

19 Q. (BY MS. HOOD) Mr. Khawaja, are you going to  
20 adhere to your lawyer's instruction and not answer my  
21 question as to who you paid for the purchase of this  
22 judgment?

23 A. I am.

24 Q. I see that this judgment -- the judgment  
25 creditor is Hoover Slovacek; correct?

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1 A. That appears correct.

2 Q. And that's the same law firm that is

3 representing you here today; correct?

4 A. That's correct.

5 MR. BALLASES: Objection. Form.

6 Q. (BY MS. HOOD) Do you have any joint defense

7 agreements with Hoover Slovacek?

8 MR. BALLASES: Objection. Form. I think --

9 well, objection. Form.

10 A. I'm not aware.

11 Q. (BY MS. HOOD) Do you have any prosecution

12 agreements with Hoover Slovacek?

13 MR. BALLASES: Objection. Form.

14 A. I'm not aware of any.

15 Q. (BY MS. HOOD) At the time that you purchased

16 this judgment, were you represented by Hoover

17 Slovacek?

18 MR. BALLASES: Objection. Form.

19 A. At the time I purchased the judgment, I was

20 represented by nobody.

21 Q. (BY MS. HOOD) So you were representing

22 yourself?

23 A. Correct.

24 Q. Who drafted the assignments?

25 MR. BALLASES: Objection. Form.

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1 A. I think that's a privileged answer.

2 MR. BALLASES: Also assert the same legal  
3 privileges we asserted in the previous questions,  
4 which would be attorney-client, attorney work product,  
5 and joint litigation and instruct the client not to  
6 answer.

7 Q. (BY MS. HOOD) Mr. Khawaja, are you going to  
8 adhere to your lawyer's instructions and not answer my  
9 question?

10 A. Yes.

11 Q. When you purchased the assignment of this  
12 judgment and the other two also purchased their  
13 portion of the judgment, was it all done at one time?

14 MR. BALLASES: Objection. Form.

15 I'm also going to assert the same legal  
16 privileges and instruct the client not to answer, as I  
17 did with the previous question.

18 Q. (BY MS. HOOD) Mr. Khawaja, are you going to  
19 adhere to your client's instruction and not answer my  
20 question as to the timing of the purchase of the  
21 assignment by the three of you?

22 A. Yes.

23 Q. Did you purchase the assignment of this  
24 judgment from Mr. Abdullatif?

25 MR. BALLASES: Objection. Form. Same

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1 objections, same assertions of legal privilege, same  
2 instruction not to answer based on those legal  
3 privileges as the question before.

4 Q. (BY MS. HOOD) Are you going to follow your  
5 lawyer's instruction and not answer my question as to  
6 who you purchased the assignment from?

7 A. Yes.

8 Q. When you purchased the assignment and you were  
9 representing yourself, what lawyers did you deal with  
10 for the other purchasers?

11 MR. BALLASES: Objection. Form. I'm also  
12 going to assert the same attorney work product and  
13 attorney -- joint litigation legal privilege and  
14 instruct the client not to answer.

15 Q. (BY MS. HOOD) Mr. Khawaja, are you going to  
16 adhere to your lawyer's instructions and not answer my  
17 questions?

18 A. Yes.

19 Q. Okay. When you purchased your assignment, was  
20 Mr. Abdullatif represented by counsel?

21 MR. BALLASES: Objection. Form.

22 Asserting the same legal privileges as the  
23 previous question and instructing client not to answer  
24 as I did with the previous question.

25 Q. (BY MS. HOOD) Mr. Khawaja, are you going to



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1 adhere to your client's instruction -- or to your  
2 lawyer's instruction and not answer my question as to  
3 whether or not Mr. Abdullatif had a lawyer at the time  
4 of the purchase?

5 A. Yes.

6 Q. At the time you purchased your assignment of  
7 this judgment, was Mr. Quinlan represented by counsel?

8 MR. BALLASES: Objection. Form.

9 I'm also going to assert the same legal  
10 privileges as I did before and instruct the client not  
11 to answer.

12 Q. (BY MS. HOOD) Mr. Khawaja, are you adhering  
13 to your counsel's instructions and not answering my  
14 question as to whether or not Mr. Quinlan was  
15 represented by counsel at the time of the assignment  
16 of the judgment?

17 A. Yes.

18 Q. Does your assignment include just your  
19 signature, or is it an assignment that includes the  
20 other purchasers' signatures?

21 MR. BALLASES: I'm going to object to the  
22 question -- object to the form of the question.  
23 Excuse me.

24 A. I don't -- I don't recall.

25 Q. (BY MS. HOOD) Do you have a physical copy, or

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1 do you have the original of this assignment?

2 A. I believe I do somewhere, not with me today.

3 I'm sure it was provided to me.

4 Q. The copy or the original?

5 A. The copy.

6 Q. Do you know who holds the original of the

7 assignment?

8 A. I don't.

9 Q. Because you don't know who holds the original  
10 of the assignment, you can't tell us whether or not  
11 the assignment has been paid; correct?

12 MR. BALLASES: Objection. Form.

13 I'm going to assert the attorney-client and  
14 attorney work product and attorney joint -- or excuse  
15 me -- joint litigation privilege and instruct the  
16 client not to answer.

17 A. I'm going to follow advice of counsel.

18 Q. (BY MS. HOOD) And as you sit here today, you  
19 can't tell us who holds the original of this  
20 assignment.

21 A. I can't.

22 MR. BALLASES: Objection. Form.

23 Q. (BY MS. HOOD) You can't?

24 A. I cannot.

25 MR. BALLASES: Objection. Form.

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1 Q. (BY MS. HOOD) Can you tell me why you didn't  
2 include a copy of the assignment with your proof of  
3 claim?

4 MR. BALLASES: Objection. Form.

5 Just -- and I'm -- and I apologize because I  
6 know I'm not supposed to talk right now, but it's  
7 attached to the actual complaint in the Southern  
8 District, so you can pull it up. It's public record.

9 MR. CHOUDHRI: Mr. Ballases, please stop  
10 coaching the witness.

11 MR. BALLASES: Be quiet.

12 MR. CHOUDHRI: I'm sorry. Mr. Khawaja, did  
13 you say something?

14 MS. HOOD: Okay --

15 MR. BALLASES: No, I told you to be quiet.  
16 This is Mr. Ballases.

17 MS. HOOD: Okay. This is my time. Okay? You  
18 guys can bicker and do your little boy thing when I'm  
19 not talking.

20 Q. (BY MS. HOOD) So if I understand correctly,  
21 this adversary action, which is based upon two  
22 judgments that you claim to have an assignment in, was  
23 originally filed in the Southern District of Texas; is  
24 that correct?

25 A. That's correct.

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1 Q. And then you took that adversary and used it  
2 as -- as an exhibit to your proof of claim that you  
3 then filed in this action; correct?

4 A. That's correct.

5 Q. And if I understand your testimony, along with  
6 this adversary action, you filed lis pendens against  
7 the debtor's property in this action; correct?

8 A. That's correct.

9 Q. And if I remember the lis pendens, you did not  
10 sign that lis pendens; correct?

11 A. Correct.

12 Q. Did Mr. Abdullatif have your permission to  
13 sign that lis pendens that was filed against the  
14 debtor's property in this action?

15 A. Yes.

16 Q. And when did you give him permission to file  
17 that lis pendens?

18 A. I'm not sure. I'm assuming sometime before it  
19 was filed.

20 Q. Was it done prior to the time that you brought  
21 the adversary action in the Southern District of  
22 Texas?

23 A. I don't know.

24 MS. HOOD: Steve, my trustee paralegal, can  
25 you bring up the first lis pendens, the supplemental

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1 lis pendens, which I think is Exhibit -- yeah --  
2 Exhibit 2, yeah. Can you go down to the signature  
3 page?

4 MR. SATHER: Yes.

5 Q. (BY MS. HOOD) All right. So Exhibit 2 is the  
6 supplemental lis pendens that you authorized  
7 Mr. Abdullatif to file against the debtor's property  
8 in this action; correct?

9 A. That's correct.

10 Q. All right. And the date of that says  
11 August 22nd, 2023. Do you agree with me?

12 A. Yes.

13 Q. Okay. And would it be fair to say that you  
14 gave Mr. Abdullatif your authority to sign on your  
15 behalf somewhere around August 22nd, 2023?

16 A. It could've been before that, but it sounds  
17 correct.

18 Q. Did you have a conversation with  
19 Mr. Abdullatif about the filing of the lis pendens?

20 MR. BALLASES: I'm going to object to the  
21 question. I'm also going to assert the  
22 attorney-client, attorney work product, and joint  
23 litigation privilege and instruct the client not to  
24 answer.

25 A. On advice of counsel, I'm not answering any

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1 questions regarding my conversations with

2 Mr. Abdullatif or Mr. Quinlan.

3 Q. (BY MS. HOOD) Did you prov -- the authority  
4 that you provided to Mr. Abdullatif for you -- for him  
5 to sign on your behalf this lis pendens, was that  
6 given verbally or in writing?

7 MR. BALLASES: Objection. Form.

8 Same assertion of legal privilege, same  
9 instruction not to answer.

10 Q. (BY MS. HOOD) Mr. Khawaja, are you going to  
11 adhere to your client's (sic) instructions and not  
12 answer my question about how you gave permission to  
13 Mr. Abdullatif --

14 A. Yes, I am.

15 MS. HOOD: Steve, can you bring up the --  
16 Exhibit Number 3?

17 Q. (BY MS. HOOD) Exhibit Number 3 is the second  
18 supplemental lis pendens that was filed also on the  
19 debtor's property, and it looks to me that that also  
20 is dated August 22nd, 2023. Is that accurate?

21 A. That looks accurate.

22 Q. All right. And is it fair to say that you  
23 again gave Mr. Abdullatif permission or authorized him  
24 to sign on your behalf somewhere around August 22nd of  
25 2023?

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1 A. Or prior to that, yes.

2 Q. Certainly you didn't give him permission to  
3 file it before you actually were an owner in the  
4 judgment; correct?

5 A. That's correct.

6 Q. And again, just to summarize your testimony,  
7 you think you recall purchasing your assignment in  
8 this judgment sometime in 2023; correct?

9 A. That's correct.

10 Q. So we've got somewhere between January and  
11 August 22nd that you purchased your interest in this  
12 judgment; correct?

13 A. That sounds right.

14 MR. BALLASES: Ms. Hood, I don't mean to  
15 derail your testimony, but if you look at the  
16 complaint itself, it says when he obtained the  
17 assignment. It's February 17th, 2023. You can read  
18 it for yourself. It's Exhibit 1.

19 MS. HOOD: So I appreciate that, Mr. Ballases.  
20 I'm trying to get your client's testimony on these  
21 issues, not what's in a document that you wrote. I  
22 want his testimony, but I appreciate it. He said he  
23 couldn't recall, and that's fine with me.

24 Q. (BY MS. HOOD) On this judgment that you  
25 purchased from Hoover Slovacek, prior -- prior --

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1 sorry; my mouth is not working -- prior to your

2 purchase of the assignment, did you review the

3 underlying pleadings related to the lawsuit?

4 A. Not really.

5 Q. Can you be more specific than "not really"?

6 Is that you didn't look at them at all, or you kind of

7 looked at them?

8 A. I may have briefly skimmed through them.

9 Q. And by skimming through them, were you aware

10 that there were no causes of action for fraudulent

11 transfer, et cetera, against Jetall?

12 A. No, I wasn't, but I'll take your word for it

13 that there were not.

14 Q. And would you agree with me that the judgment

15 debtor in Judgment Number 3 is Jetall Companies, Inc.?

16 A. Yes.

17 Q. And the judgment debtor is not Arabella PH

18 3201; correct?

19 A. No, they're an alter ego of Jetall Companies.

20 MS. HOOD: Objection. Non-responsive.

21 Q. (BY MS. HOOD) Arabella PH 3201 is not a

22 judgment debtor; correct?

23 MR. BALLASES: Objection. Form.

24 A. That's correct.

25 Q. (BY MS. HOOD) 9201 Memorial Drive is not a



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1 judgment creditor; correct?

2 A. Correct.

3 MR. BALLASES: Objection. Form.

4 Q. (BY MS. HOOD) 2727 Kirby 26L, LLC, is not a

5 judgment debtor; correct?

6 MR. BALLASES: Objection. Form.

7 A. Correct.

8 Q. (BY MS. HOOD) Texas REIT, LLC, is not a

9 judgment debtor; correct?

10 A. Correct.

11 MR. BALLASES: Objection. Form.

12 Q. (BY MS. HOOD) Dalio Holdings I is not a

13 judgment debtor; correct?

14 A. Correct.

15 MR. BALLASES: Objection. Form.

16 Q. (BY MS. HOOD) Dalio Holdings II is not a

17 judgment debtor; correct?

18 A. Correct.

19 MR. BALLASES: Objection. Form.

20 Q. (BY MS. HOOD) Houston Real Estate Properties,

21 LLC, is not a judgment debtor; correct?

22 A. (Unintelligible)

23 MR. BALLASES: Objection. Form.

24 THE REPORTER: Sorry. Was that "correct"?

25 Q. (BY MS. HOOD) What was your -- yeah, I didn't

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1 hear your --

2 A. That's correct.

3 Q. -- answer either. Yeah.

4 A. Correct. Correct.

5 MR. BALLASES: And I object to the form.

6 Q. (BY MS. HOOD) Shahnaz Choudhri is not a  
7 judgment debtor; correct?

8 A. Correct.

9 MR. BALLASES: Objection. Form.

10 Q. (BY MS. HOOD) Ali Choudhri is not a judgment  
11 debtor; correct?

12 A. Correct.

13 MR. BALLASES: Objection. Form.

14 Q. (BY MS. HOOD) Shepherd-Huldy Development I is  
15 not a judgment debtor; correct?

16 A. Correct.

17 MR. BALLASES: Objection. Form.

18 Q. (BY MS. HOOD) Shepherd-Huldy Development II  
19 is not a judgment debtor; correct?

20 A. Correct.

21 MR. BALLASES: Objection. Form.

22 Q. (BY MS. HOOD) Galleria Loop Note Holder, LLC,  
23 is not a judgment debtor; correct?

24 A. Correct.

25 MR. BALLASES: Objection. Form.

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1 Q. (BY MS. HOOD) What due diligence did you do,  
2 if any, before you alleged in this adversary action,  
3 which forms the basis of your proof of claim, that my  
4 client, Dalio Holdings, LLC, is the alter ego of  
5 Houston Real Estate Properties?

6 A. What due diligence did I do personally?

7 Q. Yeah.

8 A. I mean, I think it's stated pretty clearly in  
9 the petition what evidence we have. There's a whole  
10 court history of fraudulent transfers, commingling of  
11 assets; you know, fraudulent, unethical conduct that  
12 we have available as public record as to Mr. Choudhri  
13 and, by extension, your client's conduct. And that's  
14 the due diligence I did to make these claims.

15 Q. Okay. So you based your due diligence off  
16 your allegation that this is all public record.

17 A. That's correct.

18 MR. BALLASES: Objection. Form.

19 Q. (BY MS. HOOD) What public records did you  
20 look at?

21 A. Well, if you -- everything that's stated in  
22 the petition. If you look at Lawsuit 2013-41273,  
23 Harris County District Court, he was found to have  
24 committed fraud, filed a fraudulent lien, and there  
25 was no promissory note, and that was an entity that he

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1 controlled, HREP. If you look at -- on February 16th,  
2 2017, in Case Number 2017-1 --

3 Q. Let's go -- let's go back to the first one.

4 You --

5 MR. BALLASES: I'm going to --

6 Q. (BY MS. HOOD) -- said that there was a --

7 THE REPORTER: I'm sorry.

8 Q. (BY MS. HOOD) You claim to have a finding --  
9 (Crosstalk)

10 Q. (BY MS. HOOD) You claim there's a finding of  
11 fraud --

12 MR. BALLASES: Ms. Hood --

13 THE REPORTER: Sorry --

14 MR. BALLASES: -- can you let my client answer  
15 the question, please?

16 MS. HOOD: I -- it's my question-and-answer,  
17 and if I want to cut him off, I can.

18 MR. BALLASES: Okay. So you want to --

19 MS. HOOD: I want to -- I want to drill down  
20 on the first one. Well, he's referencing a pleading  
21 that I'm assuming that you wrote, so I just want to  
22 find out what he knows personally about some of this  
23 stuff.

24 MR. BALLASES: Objection (unintelligible).

25 Q. (BY MS. HOOD) So you reference a lawsuit --

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1 hang on. Let me find it.

2 Is that the lawsuit involving HREP?

3 A. Yes.

4 Q. Okay. And were you involved in that lawsuit?

5 A. I was not.

6 Q. So everything you know about that lawsuit, you  
7 read as a matter of public record.

8 A. That's correct.

9 Q. Was there a finding of fraudulent transfers in  
10 that case?

11 MR. BALLASES: Objection. Form.

12 A. Other fraud, but I don't know if fraudulent  
13 transfer was part of that.

14 Q. (BY MS. HOOD) I didn't see it.

15 MR. BALLASES: Objection. Sidebar.

16 Q. (BY MS. HOOD) All right. That's the first  
17 lawsuit that you said you looked at for public record  
18 in order to determine that my client is somehow the  
19 alter ego of all these other things; correct?

20 A. That's correct.

21 Q. Okay. What other -- what other public records  
22 did you review?

23 A. There's also these videos by a guy named Wayne  
24 Dolcefino I saw.

25 Q. So you looked at videos.

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1 A. Yes.

2 Q. Anything else you reviewed?

3 A. I think just generally people in the community  
4 know that your client commits fraud. He's known as a  
5 fraudster.

6 Q. Who are these --

7 A. So many people have approached me.

8 Q. Okay. Who are these people?

9 A. Yeah, I can't -- many people that he's  
10 defrauded over the years.

11 Q. Name one.

12 A. Well, Judge Norman is one. I don't know if  
13 you know him. He's in the Southern District.

14 Q. Okay. Who else?

15 A. Let's see. Who else in the community have  
16 called him a fraudster?

17 Judge Landrum, Judge Michael Landrum in the  
18 Harris County District Court, 164th District Court.  
19 He considers your client a fraud.

20 Q. And is that in relation to the HREP case?

21 A. I just think generally.

22 Q. Okay. So Judge Landrum has spoken to you  
23 about Mr. Choudhri being a fraudster?

24 A. It's in a final judgment. I can read that for  
25 you if you'd like.

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1 Q. No, I'm asking --

2 A. Do you want me to read it to you?

3 Q. No, no, no. I'm asking you. You said people

4 have told you; many people have told you. So I'm

5 asking who --

6 A. Yes.

7 Q. -- who's had a conversation with you about

8 Mr. Choudhri being a fraudster? And you've said Judge

9 Norman, and I'm assuming you didn't --

10 A. Yes.

11 Q. -- talk personally with Judge Norman. That's

12 out of an opinion; right?

13 A. Yes.

14 Q. Okay. The same as --

15 A. Members of the community --

16 Q. Okay. So who --

17 A. I'm sorry --

18 THE REPORTER: Sorry. One at a time, please.

19 Thank you.

20 Q. (BY MS. HOOD) What community?

21 MR. BALLASES: Objection. Form.

22 A. The real estate community, the Pakistani

23 community, basically anyone Mr. Choudhri has come in

24 contact with and done business with, people from those

25 communities.

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1 Q. (BY MS. HOOD) Okay. So we've got the real  
2 estate community. We've got the Pakistani community.

3 A. His family members. His own family members  
4 have said the same.

5 Q. Family members.

6 All right. So who in the real estate  
7 community have you had a specific conversation with  
8 that have informed you that he's -- that he -- that my  
9 client fraudulently -- my client, Dalio, is -- has  
10 been the recipient or the instigator of fraudulent  
11 transfers such that they're the alter ego of  
12 Mr. Choudhri?

13 A. Harold Polk.

14 Q. Who?

15 A. So just a -- Harold Polk.

16 Q. And who is Mr. Polk?

17 A. Somebody that your client knows that he ripped  
18 off, I guess.

19 Q. Well, how do you know him?

20 A. He came to me and told me that your client  
21 ripped him off.

22 Q. Okay. He came to you just out of the blue?

23 A. Yeah. I mean, you know, I don't know why he  
24 came to me, but yeah, he did.

25 Q. When did you have this --



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1 A. He probably saw the --

2 Q. When did you have this conversation with  
3 Mr. Polk?

4 A. Years ago.

5 MR. BALLASES: Objection. Form.

6 A. I can't remember.

7 Q. (BY MS. HOOD) Years ago? Okay.

8 A. Yes.

9 Q. Okay. Who else?

10 MR. BALLASES: Objection. Form.

11 A. I don't -- I can't recall. I mean, a lot of  
12 people. A lot of people.

13 MR. BALLASES: I'm going to object to the  
14 question as exceeding the scope of the judge's  
15 limiting order.

16 Can we please just stick to the basis for the  
17 proof of claim and why we are willing to withdraw it?

18 MS. HOOD: Objection. Sidebar.

19 I've asked him, what due diligence did he do  
20 in order to craft together the adversary proceeding,  
21 which was attached to the proof of claim as evidence  
22 supporting his proof of claim. And I've got, so far,  
23 two public lawsuits and some people in the community  
24 that have spoken to him, one of whose name is Harold  
25 Polk. And he can't remember anybody else's name

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1 because there's just so many over so many years.

2 Q. (BY MS. HOOD) Is that correct?

3 MR. BALLASES: No, he's identified several  
4 people.

5 I'm going to object to sidebar.

6 If you want to engage in discovery in the  
7 Southern District, we can do that, but right now we're  
8 just trying to understand why we filed the proof of  
9 claim and why we're willing to withdraw it.

10 MS. HOOD: Yeah, I understand.

11 And I object to your sidebar.

12 Q. (BY MS. HOOD) Mr. Khawaja, certainly your  
13 lawyer and Mr. Abdullatif had your permission to file  
14 this proof of claim; correct?

15 MR. BALLASES: Objection. Form.

16 A. Yes.

17 Q. (BY MS. HOOD) And you understand the proof of  
18 claim was filed under penalty of perjury.

19 A. Yes.

20 MR. BALLASES: Objection. Form.

21 Q. (BY MS. HOOD) And you understand that the  
22 amount in the proof of claim is based upon these three  
23 judgments; correct?

24 A. Yes.

25 Q. And we've run through the three judgments, and

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1 one of which you don't even have an interest in;

2 correct?

3 A. Yes, that's correct.

4 Q. And you don't know anything about the

5 substance of that judgment; correct?

6 A. That's (unintelligible).

7 MR. BALLASES: Objection. Form.

8 MS. HOOD: Excuse me. What was the answer?

9 A. That was correct.

10 Q. (BY MS. HOOD) Do you own an assigned interest

11 in any other judgment related to any of these entities

12 that you claim are alter egos of Mr. Choudhri?

13 A. I don't think so.

14 MR. BALLASES: I object to the form of the

15 question.

16 Q. (BY MS. HOOD) Is it your habit to -- strike

17 that.

18 If one of these judgments became available to

19 purchase, would you buy it?

20 MR. BALLASES: Objection. Form.

21 A. I don't know. I don't know how much money

22 your client has. It just depends. Collectibility

23 matters, so...

24 Q. (BY MS. HOOD) Collectibility matters?

25 A. Yes.

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1 Q. Did collectibility matter to you when you  
2 purchased the assignment of the judgments that form  
3 the basis of your proof of claim?

4 A. Yes.

5 MR. BALLASES: Objection. Form.

6 Q. (BY MS. HOOD) Did you do any due diligence  
7 prior to filing your proof of claim in this lawsuit as  
8 to the debtor's ability to pay these judgments?

9 A. Yes.

10 MR. BALLASES: Objection. Form.

11 Q. (BY MS. HOOD) What due diligence did you do?

12 A. Reviewed public documents, spoke to people,  
13 watched videos of Wayne Dolcefino online.

14 Q. Okay. So the public documents that you  
15 reviewed prior to filing your proof of claim in this  
16 lawsuit --

17 A. Yes.

18 Q. -- that -- let me finish -- that supported  
19 your proof of claim regarding collectibility were  
20 public records and the --

21 A. Yes.

22 Q. -- Dolcefino videos.

23 A. That's correct.

24 MR. BALLASES: Objection. Form.

25 Q. (BY MS. HOOD) When did you learn that your

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1 proof of claim was uncollectible?

2 MR. BALLASES: Objection. Form.

3 A. I think the Texas REIT judge in that case said  
4 that there wasn't enough money in the Texas REIT  
5 matter to pay us.

6 Q. (BY MS. HOOD) When you filed your proof of  
7 claim, how much money was in Texas REIT?

8 MR. BALLASES: Objection. Form.

9 A. I'm not sure. No idea.

10 Q. (BY MS. HOOD) If I understand correctly,  
11 bankrupt debtors have to file documents that outline  
12 their assets; correct?

13 A. Yes.

14 MR. BALLASES: Objection. Form.

15 Q. (BY MS. HOOD) Did you look at any of those  
16 filings by the debtor?

17 A. I believe I did, but a lot of what your client  
18 files is fraudulent, so -- or the debtor in this case.  
19 So it's hard to trust those documents.

20 MS. HOOD: Objection. Non-responsive.

21 Q. (BY MS. HOOD) Did you look at any of the  
22 documents filed by the debtor, the accounting  
23 documents, prior to filing your proof of claim?

24 MR. BALLASES: Objection. Form.

25 A. Yes.

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1 Q. (BY MS. HOOD) Which documents did you look  
2 at?

3 A. I'm sure I reviewed the schedules. I don't --  
4 I can't recall specifically what I looked at.

5 MR. BALLASES: I'm going to go ahead on this  
6 line of questioning and instruct him not to answer  
7 because it gets into attorney work product.

8 MS. HOOD: I'm just asking what he looked at.  
9 I don't want to know what you looked at or what you  
10 talked to him about.

11 MR. BALLASES: I understand.

12 MR. CHOUDHRI: I'm gonna object.

13 Mr. Ballases, you continue to coach the  
14 witness, so I'm gonna object. Please stop coaching  
15 the witness.

16 MR. BALLASES: What's your legal basis, sir,  
17 for your objection?

18 MR. CHOUDHRI: Mr. Ballases, because you're  
19 making sidebar, coaching the witness. Keep your  
20 objections limited. Don't coach the witness. You've  
21 been doing it throughout the whole depo, and you're  
22 also objecting on a frivolous basis. But regardless,  
23 please stop coaching the witness.

24 MR. BALLASES: Okay. So what's your formal  
25 objection for the record?

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1 MR. CHOUDHRI: For the record, you're  
2 improperly coaching the witness. Refrain your  
3 objections --

4 MR. BALLASES: Okay.

5 MR. CHOUDHRI: -- to just objections.

6 MR. BALLASES: I want to make sure. Okay. I  
7 just want to make sure your formal objection was on  
8 the record.

9 THE WITNESS: He's just buying time for his  
10 lawyer to make up questions.

11 MS. HOOD: What? Mr. --

12 MR. CHOUDHRI: Mr. Khawaja, what did you say?

13 MS. HOOD: Yeah. Excuse me, Mr. Choudhri.  
14 This is my time.

15 Q. (BY MS. HOOD) First of all, there's no  
16 requirement that I pepper you incessantly directly.  
17 I'm going through my notes. I don't need time to come  
18 up with questions for you.

19 I'd actually like it if you would answer my  
20 questions, but you've chosen not to do that. So I'm  
21 going through my notes to see if I can actually ask  
22 some questions that you would be kind enough to answer  
23 relating to your proof of claim and why you filed it.  
24 So when you --

25 MR. BALLASES: (Unintelligible) and what

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1 you're doing, okay, or your sidebar. And we are  
2 answering questions. I'm sorry you don't like them.

3 MS. HOOD: You're not answering them. You're  
4 objecting.

5 Q. (BY MS. HOOD) At the time that you filed your  
6 proof of claim, you had satisfied yourself that you'd  
7 be able to collect your judgments through this debtor.

8 A. Yes.

9 MR. BALLASES: Objection. Form.

10 Q. (BY MS. HOOD) Do you understand that in order  
11 to collect your judgments through this debtor, you  
12 would have to win on your adversary claim regarding  
13 the alter egos?

14 A. Yes.

15 Q. And if I read your adversary complaint, it's  
16 your assertion that Mr. Choudhri keeps his entities  
17 devoid of assets in order to keep creditors from  
18 collecting their judgments. Is that a fair statement?

19 A. I mean, I think that's one of many tactics  
20 that he uses, but yes.

21 Q. And certainly you have these judgments at your  
22 ready; correct?

23 MR. BALLASES: Objection. Form.

24 A. Yeah. I'm sorry. I didn't -- I didn't quite  
25 understand the question.



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1 Q. (BY MS. HOOD) Yeah, bad question.

2 You have these judgments that you own that you  
3 could go out and try to collect absent filing  
4 documents in Bankruptcy Court; correct?

5 A. I guess.

6 Q. And you've not chosen to pursue any  
7 post-judgment collection of these judgments in Texas  
8 State Court; correct?

9 MR. BALLASES: Objection. Form.

10 I'm going to instruct the client not to  
11 answer.

12 You're invading attorney-client, work  
13 privilege -- attorney-client, and you're also getting  
14 into joint litigation privilege. We're not going to  
15 help Mr. Choudhri hide more assets.

16 A. On advice of counsel, I will not answer that  
17 question.

18 Q. (BY MS. HOOD) It's not -- okay. The question  
19 is this. Okay? Based upon public records, I find no  
20 activity by you to collect these judgments in Texas  
21 State Courts; is that an accurate statement?

22 A. Yes.

23 MR. BALLASES: I object to the form.

24 Q. (BY MS. HOOD) And rather than pursue  
25 opportunities in State Court, you and your co-owners

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1 have chosen to pursue unrelated third parties in

2 Bankruptcy Court; correct?

3 MR. BALLASES: Objection. Form.

4 A. No, that's not correct. "Unrelated"? What do

5 you mean "unrelated"? What is that supposed to mean?

6 Q. (BY MS. HOOD) Texas (sic) Real Estate

7 Properties, LLC, is not a judgment debtor; correct?

8 You've already admitted this.

9 A. Does that mean -- you said "unrelated."

10 That's not -- they're very related.

11 Q. In your mind, but they don't -- they're not a

12 party to the judgment; correct?

13 MR. BALLASES: Objection. Sidebar.

14 A. In reality and on public record.

15 Q. (BY MS. HOOD) The debtor in this case is not

16 a judgment debtor; correct?

17 A. Asked and answered.

18 Q. Okay. Now you're objecting to your own

19 questions? Are you a lawyer or a witness?

20 A. I am a lawyer, but I mean --

21 Q. Okay. Answer my question.

22 A. -- just answering --

23 Q. Answer my question.

24 A. No, I'm not gonna answer that question.

25 Q. This debtor is not a judgment debtor to you;

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1 correct?

2 THE WITNESS: Do you want me to answer?

3 MR. BALLASES: Objection. Form.

4 You can answer.

5 A. No.

6 Q. (BY MS. HOOD) And yet you chose to pursue  
7 this debtor to try to collect your judgments that are  
8 in the name of others; correct?

9 A. This -- yes. This debtor is an alter ego of  
10 all the other debtor -- all the other defendants in  
11 this case.

12 Q. Tell me where there's a finding by a court of  
13 law that this debtor is the alter ego of one of the  
14 two entities in which you hold an assigned interest.

15 A. We will prove it in this case.

16 Q. Okay. That's not my question. Tell me where  
17 I can find as a matter of law that Ali Choudhri and  
18 Houston Real Estate Properties, LLC, are one and the  
19 same.

20 MR. BALLASES: Objection. Form.

21 A. We don't have that.

22 Q. (BY MS. HOOD) Tell me where I can find as a  
23 matter of public record that Jetall is one and the  
24 same with this debtor.

25 MR. BALLASES: Objection --

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1 A. Based on his testimony in multiple cases.

2 MR. BALLASES: Objection. Form.

3 Q. (BY MS. HOOD) Tell me where I can find as a  
4 matter of public record a finding by a trier of fact  
5 that Jetall Companies is one and the same as this  
6 debtor.

7 MR. BALLASES: Objection. Form.

8 A. I don't -- I'm not sure if we'll find that.

9 Q. (BY MS. HOOD) There isn't one, is there?

10 MR. BALLASES: Objection. Form.

11 A. We have multiple public record documents  
12 indicating that Ali Choudhri is one and the same as  
13 all of his entities.

14 Q. (BY MS. HOOD) And there's not a finding by a  
15 trier of fact that this debtor is one and the same  
16 with Jetall Companies, is there?

17 A. Only admissions by your client. That's it.

18 MR. BALLASES: Objection. Form.

19 Q. (BY MS. HOOD) There's no finding by a trier  
20 of fact that this debtor is one and the same as Jetall  
21 Companies; correct?

22 MR. BALLASES: Objection. Form.

23 (Phone ringing.)

24 A. (Unintelligible)

25 THE REPORTER: I'm sorry. I'm sorry. I

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1 did -- sorry. I did not hear your answer. Could you  
2 please restate your answer?

3 A. I said -- I said, Correct, not by a trier of  
4 fact, but by admissions through your client.

5 MS. HOOD: Objection. After "correct" --  
6 objection. Non-responsive after "correct."

7 Mr. Khawaja, I fully expect to go back to the  
8 Court and try to get him to compel you to answer some  
9 of my questions that I think were improperly objected  
10 to, and so I can go through that with your lawyer  
11 through motion practice. I appreciate your time  
12 today. Based upon whether or not the other lawyers  
13 and Mr. Choudhri have questions, I may or may not get  
14 another pass at you, and I appreciate your time.

15 THE WITNESS: Thank you.

16 MS. HOOD: I'm going to pass the witness to  
17 the next creditor in line, and I reserve my right to  
18 come back and ask questions -- follow-up questions if  
19 I deem necessary.

20 THE REPORTER: Sorry. Just before we go to  
21 Mr. Choudhri, would it be possible to just take two  
22 minutes to go to the bathroom?

23 MS. HOOD: Oh, absolutely. You're in charge.  
24 You're the one doing the hard work.

25 THE REPORTER: Thank you. Just two minutes.

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1 Thanks.

2 MR. CHOUDHRI: Absolutely, Cheryl. Take your  
3 time.

4 THE REPORTER: Thank you.

5 (A recess was taken.)

6 BY MR. CHOUDHRI:

7 Q. Mr. Khawaja, good afternoon. How are you?

8 A. I'm good, man. Just -- let's get to your  
9 questions. I don't -- we don't have time for  
10 formalities. Thank you.

11 Q. Mr. Khawaja, you're not looking at -- first of  
12 all, who is present with you in the room there?

13 MR. BALLASES: We've already answered that.

14 Objection. Form.

15 We're also having trouble hearing you, so you  
16 might want to turn up your volume --

17 A. Yeah, you need to turn your speaker up.

18 Q. (BY MR. CHOUDHRI) Mr. Khawaja, can you hear  
19 me now?

20 A. Better, but you still need to speak up a  
21 little bit.

22 Q. So can you identify who's in the room there  
23 with you, Mr. Khawaja?

24 MR. BALLASES: Objection. Form.

25 A. Mr. Quinlan is here; my attorney, Michael

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1 Ballases.

2 Q. Is Osama Abdullatif in the room with you?

3 A. He has --

4 MR. BALLASES: Objection. Form.

5 A. He's not in the room, like, at this minute.

6 Q. (BY MR. CHOUDHRI) But throughout this  
7 deposition, you've had Osama Abdullatif and John  
8 Quinlan sitting in the room with you, present;  
9 correct?

10 A. Yes.

11 MR. BALLASES: Objection. Form.

12 We've already answered that and said that.

13 Quit wasting everybody's time.

14 MR. CHOUDHRI: Mr. Ballases, I would ask you  
15 to please calm down and allow me to ask my questions.

16 MR. BALLASES: Objection. Sidebar.

17 Q. (BY MR. CHOUDHRI) Mr. Khawaja, you had -- as  
18 we started this deposition, you had said that I had  
19 defrauded you?

20 A. Ali, I'm sorry. You're really going to have  
21 to turn up your sound because I can't hear you and  
22 neither can the people in the room.

23 MR. CHOUDHRI: Is everybody -- can everybody  
24 hear me okay?

25 Cheryl, can you hear me?

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1 THE REPORTER: I can hear you.

2 MR. CHOUDHRI: Okay. Maybe it's only

3 Mr. Khawaja who can't hear me, then.

4 THE WITNESS: Osama, can you hear him?

5 MR. BALLASES: It's difficult to hear you.

6 MR. ABDULLATIF: No, I can't hear him without  
7 hearing aid.

8 A. Mr. Quinlan can't hear you and neither can  
9 Osama, and they need to hear you.

10 Q. (BY MR. CHOUDHRI) Well, the court reporter  
11 can hear me. If they want me to come closer, they  
12 can. I would actually object to them even being there  
13 and handing you notes, but we'll try to --

14 MR. BALLASES: Objection. Sidebar.

15 MR. CHOUDHRI: -- get on with the deposition.

16 MR. BALLASES: (Unintelligible)

17 MR. CHOUDHRI: The court reporter could hear  
18 me just fine.

19 THE WITNESS: Okay.

20 Q. (BY MR. CHOUDHRI) Mr. Khawaja, how do you  
21 know John Quinlan?

22 MR. BALLASES: Objection. Form.

23 A. I'm not gonna answer that question.

24 Q. (BY MR. CHOUDHRI) You're not gonna answer the  
25 question of how you know John Quinlan?



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1 A. I -- I met him in the real estate community.

2 Q. When did you meet Mr. Quinlan?

3 MR. BALLASES: Objection.

4 Ali, can you show yourself? If you're going  
5 to be asking questions, you need to show yourself.

6 THE WITNESS: Yes.

7 MR. BALLASES: Thank you.

8 MR. CHOUDHRI: Okay. Can you all see me now?  
9 Is that okay?

10 MR. BALLASES: Yes.

11 Q. (BY MR. CHOUDHRI) Okay. Mr. Khawaja, you  
12 were present earlier during the deposition when you  
13 were being asked questions. Did you happen to listen  
14 to Judge Robinson's oral ruling?

15 MR. BALLASES: Objection. Form.

16 A. I don't know what that has to do with  
17 anything.

18 Q. (BY MR. CHOUDHRI) The deposition that we're  
19 here on, Mr. Khawaja, is --

20 A. Yes.

21 Q. -- subject to a court order. Do you  
22 understand that?

23 MR. BALLASES: Objection. Form.

24 This has nothing to do with the proof of  
25 claim. Move on.

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1 A. Please get to the proof of claim,  
2 Mr. Choudhri.

3 Q. (BY MR. CHOUDHRI) Mr. Khawaja, this is my  
4 deposition. I get to ask you questions, and you can  
5 answer them. This is my opportunity.

6 MR. CHOUDHRI: And so, again, Court Reporter,  
7 would you please repeat the question?

8 THE REPORTER: The question is (Reading:) The  
9 deposition that we're here on, Mr. Khawaja, is subject  
10 to a court order. Do you understand that?

11 A. I didn't -- I have not seen a court order.

12 Q. (BY MR. CHOUDHRI) Are you aware, earlier  
13 today, that an oral ruling on an audio from the Court  
14 was sent to your attorney, Michael Ballases?

15 A. It -- it may have been.

16 MR. BALLASES: Objection. Form.

17 Q. (BY MR. CHOUDHRI) And are you aware, whether  
18 written or oral, we are here pursuant to a court  
19 order? Are you aware of that?

20 MR. BALLASES: Objection. Form.

21 A. Might -- that might be the case.

22 Q. (BY MR. CHOUDHRI) But you're not aware that  
23 we're here pursuant to a court order.

24 MR. BALLASES: Objection. Form.

25 A. It could possibly be the case.

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1 Q. (BY MR. CHOUDHRI) But you don't know?

2 A. I don't know.

3 Q. And I've asked you earlier as how you know  
4 Mr. Quinlan, and your answer was you're not going to  
5 answer that; is that correct?

6 MR. BALLASES: Objection. Form.

7 A. I think I told you after -- after that that I  
8 met him in the real estate community.

9 Q. (BY MR. CHOUDHRI) And when did you meet him?

10 MR. BALLASES: Objection. Form.

11 Are you going to ask every question two or  
12 three times? Ask good questions.

13 MR. CHOUDHRI: Mr. --

14 A. I can't remember.

15 MR. CHOUDHRI: Mr. Ballases -- Mr. Ballases,  
16 for the record, I would ask you to please stop  
17 interfering and obstructing the deposition.

18 MR. BALLASES: Objection. Sidebar.

19 So I would just request that you comply with  
20 the judge's instruction to tailor the questions  
21 narrowly to the reasons why the proof of claim was  
22 filed and why it was withdrawn and not ask why he  
23 knows people and who he knows people and not ask  
24 things three times.

25 Q. (BY MR. CHOUDHRI) Is John Quinlan a

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1 co-claimant on the proof of claim?

2 A. I believe so.

3 MR. BALLASES: Objection. Form.

4 Q. (BY MR. CHOUDHRI) Is Osama Abdullatif a

5 co-claimant on the proof of claim?

6 MR. BALLASES: Objection. Form.

7 A. I believe so, yes.

8 Q. (BY MR. CHOUDHRI) When did you meet Osama

9 Abdullatif?

10 MR. BALLASES: Objection. Form.

11 A. Maybe 2010. 2009 or '10, something like that.

12 I'm not sure. Around the time you deprived me of my

13 property, I think.

14 Q. Which property is that, Mr. Khawaja?

15 A. The Avondale property.

16 MR. BALLASES: Objection. Form.

17 Q. (BY MR. CHOUDHRI) Can you tell us a little

18 bit about that, because you've mentioned it several

19 times in this deposition, and so I'd like you to tell

20 us a little more about the Avondale property.

21 A. No --

22 MR. BALLASES: Objection. Form.

23 I'm going to instruct him not to answer

24 because you're violating the judge's instruction as to

25 this limited deposition.

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1 Please stick to the proof of claim and the  
2 reason why it's being withdrawn.

3 MR. CHOUDHRI: Mr. Ballases, he's opening the  
4 door. He's answering my questions. I have a right to  
5 ask him questions. Okay?

6 MR. BALLASES: Yeah, so you're not a lawyer.  
7 You don't know what you're talking about.

8 MR. CHOUDHRI: Mr. Ballases, please be  
9 respectful, sir. I know it's difficult, but please be  
10 respectful.

11 Q. (BY MR. CHOUDHRI) Mr. Khawaja --

12 MR. BALLASES: I am.

13 Q. (BY MR. CHOUDHRI) -- are you going to answer  
14 my --

15 MR. BALLASES: I'm respecting my client --

16 Q. (BY MR. CHOUDHRI) -- questions --

17 MR. CHOUDHRI: Mr. Ballases, please stop  
18 disrupting the deposition.

19 Q. (BY MR. CHOUDHRI) Mr. Khawaja, you said you  
20 met Mr. Osama Abdullatif when I deprived you of your  
21 property. Is that -- did I hear that correct?

22 MR. BALLASES: Objection. Form.

23 A. Yes.

24 MR. BALLASES: I'm going to instruct you not  
25 to answer.

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1 We're not going to talk about this.

2 THE WITNESS: Okay. Sorry.

3 MR. BALLASES: It has nothing to do with the  
4 proof of claim. It has nothing to do for the reason  
5 for filing it. It has nothing --

6 A. Ali, we can grab a cup of coffee afterwards.  
7 You can ask me all about that. Let's please stick to  
8 the purpose of this. Okay?

9 MR. CHOUDHRI: Let's have some decorum,  
10 gentlemen. This is a formal deposition. I'm asking  
11 the questions. Mr. Khawaja just said yes, so why the  
12 proof of claim was filed is very relevant. And  
13 Mr. Khawaja just answered that, so I have an  
14 opportunity to explore that.

15 Mr. Ballases, you have a law license. You  
16 have to follow the creed that you've been licensed by,  
17 so please don't frivolously object and coach the  
18 witness. Okay? I --

19 MR. BALLASES: Objection. Sidebar.

20 MR. CHOUDHRI: -- would like -- if everybody  
21 wants, I'm happy to play the audio of the judge's oral  
22 ruling so Mr. Khawaja is aware -- and so are you,  
23 Mr. Ballases -- and we don't have to waste more time  
24 like we did this morning about what the scope of the  
25 deposition is about. Would you like me to do that,

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1 Mr. Ballases, so you can stop --

2 MR. BALLASES: Objection. Sidebar --

3 MR. CHOUDHRI: -- interfering --

4 MR. BALLASES: The only reason you're asking  
5 questions is because I heard it. So why don't you be  
6 quiet and focus on asking questions if it's relevant  
7 to the judge's scope. Thank you.

8 MR. CHOUDHRI: Madam Court Reporter, do you  
9 have a -- do you have an ability to play at a certain  
10 point of the audio? Is that something you're able to  
11 do for us?

12 THE REPORTER: I am actually not authorized to  
13 be playing audio or sharing exhibits during the  
14 deposition.

15 MR. CHOUDHRI: Okay. Well, maybe we can then  
16 play the audio at 23 minutes and 14 seconds, and then  
17 we'll play it at 28 minutes and 12 seconds.

18 Q. (BY MR. CHOUDHRI) Mr. Khawaja, you -- you  
19 have indicated that you have not heard the oral  
20 ruling, why we're here, by Judge Robinson; is that  
21 correct?

22 A. Let's assume for purposes of this question I  
23 have. What would you like me to answer?

24 Q. Well, I just want to clarify because you keep  
25 not answering, and Mr. Ballases keeps interfering and

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1 interrupting, so I want to go ahead and get the  
2 judge's ruling on the record, so --

3 A. Just ask me the questions that you want the  
4 answers to. I'm happy to answer the questions.

5 Q. Were you present or on the phone when the  
6 hearing took place with Judge Robinson?

7 A. I was not.

8 MR. BALLASES: Objection. Form.

9 MR. CHOUDHRI: Let's go ahead and play at  
10 23 minutes and 14 seconds.

11 Gene, can you play that right now?

12 MR. BALLASES: So just for the record, we --  
13 as I've told your counsel, we have to cut it off at  
14 4:30. If this is how you want to use your time, by  
15 all means. It's your dime.

16 MR. CHOUDHRI: Mr. Ballases, you've been  
17 interfering with the depo all day, and we're going to  
18 do this by the rules and what the rules -- the federal  
19 rules are and the timing. So if you want to walk out  
20 of a depo, that's really your choice --

21 MR. BALLASES: (Unintelligible)

22 MR. CHOUDHRI: -- and you'll suffer the  
23 consequences.

24 THE REPORTER: Okay. So just before we play  
25 the audio, as I let everybody know in the e-mail, I



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1 cannot transcribe anything I cannot clearly hear. If  
2 you would like a separate transcription of this audio,  
3 then you can contact our office.

4 MR. CHOUDHRI: No -- no problem, Cheryl.  
5 We'll do the best we can.

6 THE REPORTER: Okay. Thank you.

7 MR. CHOUDHRI: And I'm sure you will too. And  
8 if it works, great.

9 THE REPORTER: Thank you.

10 MR. CHOUDHRI: So while we're getting ready to  
11 do that -- go ahead, Gene. Are you ready?

12 MR. MCCUBBIN: Yeah. You said 23:14.

13 MR. CHOUDHRI: Correct, at 23 minutes and  
14 14 seconds. Let's start there.

15 MR. MCCUBBIN: Yeah, this is, I think, 23:10.  
16 Here we go.

17 (Audio file played.)

18 MR. MCCUBBIN: There you go.

19 MR. CHOUDHRI: Would you go to 23 minutes and  
20 18 -- 28 minutes and 12 seconds, please?

21 MR. MCCUBBIN: Yeah, give me a second.

22 MR. CHOUDHRI: 28 minutes and 12 seconds.  
23 Let's get that on the record. Go ahead.

24 MR. MCCUBBIN: Okay.

25 (Audio file played.)

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1 MR. MCCUBBIN: There you go.

2 Q. (BY MR. CHOUDHRI) Mr. Khawaja, were you able  
3 to hear the judge, Robinson?

4 A. Yes.

5 Q. Does that help you understand a little more  
6 about what we're here about?

7 A. What's your question?

8 Q. Did you --

9 MR. BALLASES: Objection (unintelligible) --

10 Q. (BY MR. CHOUDHRI) -- hear him say motivations  
11 of filing the proof of claim? Do you understand what  
12 that means, motivations of filing the proof --

13 A. Yes.

14 Q. -- of claim? Okay.

15 A. Yes.

16 Q. So again, I want to go back to some of my  
17 questions, Mr. Khawaja. You said that I defrauded you  
18 of your property.

19 A. Yes.

20 Q. So can you explain how I defrauded you of your  
21 property? I want to understand the motivations here.

22 A. I think we got a trial --

23 MR. BALLASES: Objection. Form.

24 A. -- on that case coming up in a month. Let's  
25 wait till trial. Let's wait till we get to trial on

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1 that.

2 Q. (BY MR. CHOUDHRI) Well, Mr. Khawaja, you  
3 filed this proof of claim in the Texas REIT bankruptcy  
4 case; correct?

5 A. Yes.

6 MR. BALLASES: Objection. Form.

7 Q. (BY MR. CHOUDHRI) And so your motivation,  
8 when I asked you earlier -- and we can go back and  
9 have the court reporter reread some of your answers  
10 earlier in the deposition. I've taken notes as well.  
11 I just want to make sure the record is good and clear;  
12 there's no confusion.

13 MR. BALLASES: Objection. Form.

14 Objection. Sidebar.

15 Q. (BY MR. CHOUDHRI) Mr. Khawaja, I just want to  
16 understand today; you're under no medication. Right?

17 A. Yes.

18 MR. BALLASES: Objection. Form.

19 Q. (BY MR. CHOUDHRI) And you're here and able to  
20 answer truthfully under oath?

21 A. Yes.

22 MR. BALLASES: Objection. Form.

23 A. Yes.

24 Q. (BY MR. CHOUDHRI) And you understand you're  
25 under oath as if you were in a courtroom; correct?

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1 MR. BALLASES: Objection. Form.

2 A. Like I'm in front of a jury, yes.

3 Q. (BY MR. CHOUDHRI) Or a judge.

4 A. Or a judge.

5 Q. Okay. So, Mr. Khawaja, can you tell us about

6 when you say, You defrauded me of my property, and you

7 said Avondale. Did I hear that correctly?

8 MR. BALLASES: Objection --

9 A. Mr. Choudhri, here's the thing --

10 MR. BALLASES: Objection. Form.

11 I'm going to instruct my client not to answer

12 because it exceeds the scope of the deposition as to

13 what -- the judge's order.

14 Plus, as I understand it, based on what was

15 just said --

16 THE WITNESS: There's a trial coming.

17 MR. BALLASES: -- he got a trial coming up,

18 and I'm not going to let you ask him -- get a second

19 deposition of him in a wholly separate matter that's

20 irrelevant to our proof of claim. Move along, please,

21 sir.

22 MR. CHOUDHRI: Mr. Ballases, you have been

23 disrupting this deposition the entire time. You

24 refused to let me answer -- ask questions, Ms. Lori

25 Hood. We had to send you the audio. You misstated

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1 what the judge said. You continue to disrupt the  
2 deposition. We're allowed -- I played the audio  
3 ruling. The judge says the motivation of filing the  
4 proof of claim, and he says, Because you defrauded me  
5 of my property, Avondale. So I have a right to get  
6 into that.

7 When he answers a question, Mr. Ballases, I  
8 have a right to explore that because that's his  
9 answer. He opened the door. Throughout this depo, he  
10 opened the door, Mr. Ballases, so I am entitled to ask  
11 those questions. And if you're going to continue --

12 MR. BALLASES: (Unintelligible)

13 MR. CHOUDHRI: -- to instruct him wrongfully  
14 to not answer that, then just instruct him, but stop  
15 doing what you're doing and making talking objections.  
16 Either object or instruct him not to answer, and we'll  
17 keep moving on. But keep your objections limited to  
18 what's correct and not frivolous --

19 MR. BALLASES: What's your legal objection,  
20 sir -- what's your legal objection, sir, because I  
21 didn't hear it.

22 MR. CHOUDHRI: You continue to do sidebars  
23 throughout the deposition and disrupt and frustrate  
24 the deposition. We're trying to have a smooth  
25 deposition; you continue to have sidebars. So please

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1 refrain from that, Mr. Ballases.

2 Q. (BY MR. CHOUDHRI) Mr. Khawaja, when you  
3 said --

4 MR. BALLASES: Objection. Sidebar.

5 Q. (BY MR. CHOUDHRI) -- you -- Mr. Khawaja, what  
6 is the Avondale property?

7 MR. BALLASES: Objection. Form.

8 This has nothing do to with the proof of claim  
9 or the withdrawal --

10 (Crosstalk)

11 A. We're getting ready to stop this depo -- you  
12 need to get to your questions. We're not talking  
13 about cases that are going to trial. You know better  
14 than that. I'm not doing it. So get to the questions  
15 you have about this proof of claim. I'm happy to  
16 answer those, or we're done.

17 Q. (BY MR. CHOUDHRI) Mr. Khawaja, are you going  
18 to comply with the Court's order on this --

19 A. Yes.

20 Q. -- now getting into motivations for filing the  
21 claim? And when asked, you said, Because you  
22 defrauded me of my property.

23 A. No, I didn't. That's not true. You asked  
24 me --

25 Q. That's not --

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1 A. -- when did I meet Osama -- you asked me when  
2 did I meet Osama Abdullatif, and I said, Around the  
3 time you defrauded me of my property.

4 Q. And when I -- when you said "my property,"  
5 you're defining your property as Avondale; is that  
6 correct?

7 MR. BALLASES: Objection. Form.

8 A. Yeah, I'm not going to -- again, we're getting  
9 ready to shut the depo down, so it's up to you.

10 Q. (BY MR. CHOUDHRI) So you're refusing to  
11 answer these questions; correct?

12 A. I'm refusing to answer questions that are  
13 outside the scope of what you're permitted to ask,  
14 correct.

15 MR. BALLASES: Objection. Form.

16 A. You're not an attorney.

17 Q. (BY MR. CHOUDHRI) So because I'm not an  
18 attorney, I can't ask you questions per the Court's  
19 ruling --

20 A. Outside --

21 Q. -- is your objection?

22 A. -- of the scope -- outside of the scope,  
23 you're not. That's correct.

24 Q. So are you saying motivations for filing the  
25 claim and you opening the door is outside the scope?

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1 A. Yes.

2 Q. Okay.

3 MR. BALLASES: Objection. Form.

4 Q. (BY MR. CHOUDHRI) And you're gonna refuse --  
5 you're gonna refuse to answer any of those questions;  
6 correct?

7 MR. BALLASES: Objection. Form.

8 A. You've only asked me one that I'm not gonna  
9 talk about because there's a trial coming up. I think  
10 the judge will understand that. Your -- if your --  
11 any of the attorneys that you're paying that are here  
12 with you would care to speak up, they'll tell you,  
13 Mr. Choudhri, you can't ask those questions. So you  
14 should ask them too.

15 MR. BALLASES: I object to the form of the  
16 question.

17 Q. (BY MR. CHOUDHRI) Mr. Khawaja, did you -- you  
18 mentioned Wayne Dolcefino; correct?

19 A. Yes.

20 MR. BALLASES: Objection. Form.

21 Q. (BY MR. CHOUDHRI) And, Mr. Khawaja, is  
22 somebody in the room coaching you? Because you keep  
23 looking at somebody else and talking and -- who's in  
24 front of you right now that you keep looking at and  
25 talking --



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1 A. I don't need to be coached to answer your  
2 silly questions, no.

3 MR. BALLASES: Objection. Sidebar.

4 A. I can answer them with my eyes closed. Do you  
5 want me to do that?

6 Q. (BY MR. CHOUDHRI) Mr. Khawaja, you can answer  
7 them however you want. I just want you to answer them  
8 truthfully --

9 A. Yes.

10 Q. -- and honestly.

11 A. Yes.

12 Q. When did you meet Mr. Ballases?

13 MR. BALLASES: Objection. Form.

14 A. I don't know, to be hon -- but, you know, you  
15 understand he's my attorney, and this is all --  
16 anything I discussed with him, ever, including when I  
17 met him or where I met him, is protected by  
18 attorney-client privilege. You can't ask me those  
19 questions.

20 Q. (BY MR. CHOUDHRI) So are you going to refuse  
21 to answer my question on when you met Mr. Ballases?

22 A. Yes, I am.

23 Q. Mr. Khawaja, are you aware -- let's --

24 MR. CHOUDHRI: Steve, are you there? Would  
25 you pull up that proof of claim, Steve?

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1 MR. SATHER: Just give me just a moment. I  
2 need to turn my sharing back on.

3 MR. CHOUDHRI: No problem.

4 THE REPORTER: And just while he's doing that,  
5 Mr. Khawaja, could you spell Avondale for me, please?

6 THE WITNESS: A-V-O-N-D-A-L-E.

7 THE REPORTER: Thank you.

8 MR. SATHER: Okay. I'm there.

9 MR. CHOUDHRI: Would you go down, Mr. Sather?  
10 Just scroll down a little bit, please. Keep going.

11 Go to paragraph 9. Stop right there.

12 Q. (BY MR. CHOUDHRI) Mr. Khawaja, what does  
13 Number 9 say on the proof of claim?

14 A. 9 --

15 MR. CHOUDHRI: Time out. Time out. Before we  
16 go there, Mr. Sather, would you scroll up just for a  
17 second a little bit? Stop right there.

18 Q. (BY MR. CHOUDHRI) Mr. Khawaja, what does that  
19 captioning say? It starts at "24-10120." Would you  
20 read that, please, into the record?

21 A. 24-1010 (sic), and this is at Number 4? Oops.  
22 Sorry. One second here.

23 MR. BALLASES: Steve, would you mind -- this  
24 is Michael Ballases. Will you make it bigger? I  
25 can't read it on the screen. Please.

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1 Q. (BY MR. CHOUDHRI) Mr. Khawaja, my question is  
2 to you.

3 MR. BALLASES: Thank you.

4 MR. CHOUDHRI: Stop, please.

5 Q. (BY MR. CHOUDHRI) What does it say? Claim  
6 Number -- what exactly does that say? Would you read  
7 that -- that entire header --

8 A. (Reading:) Read the --

9 Q. -- into the record?

10 A. (Reading:) Read the instructions before  
11 filling out this form. This form is for making a --

12 Q. No --

13 A. (Reading:) -- claim for payment in a  
14 bankruptcy case --

15 Q. No.

16 A. Which one?

17 Q. No, Mr. Khawaja. No, Mr. Khawaja. Look on  
18 top where it says -- where it has a case number,  
19 starts off with a case number. And then --

20 A. Yes.

21 Q. -- that's what -- would you read what's  
22 highlighted, Mr. Khawaja, into the record?

23 A. Yeah, twenty -- okay. (Reading:)  
24 24-10120-smr, Claim Number 9-1, filed 06/04/24, Main  
25 Document page 1 of 3.

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1 Q. Yes. Is that what you authorized to be filed?

2 A. Yes.

3 MR. BALLASES: Objection. Form.

4 MR. CHOUDHRI: Scroll down, Mr. Sather.

5 Scroll down, Mr. Sather. Okay. Stop right there.

6 Q. (BY MR. CHOUDHRI) Mr. Khawaja, what does it  
7 say on paragraph 9?

8 A. (Reading:) Is all or part of the claim  
9 secured? Yes. The claim is secured by a lien on  
10 property.

11 Is that what you're referring to?

12 Q. Yes.

13 MR. CHOUDHRI: Stop right there.

14 Q. (BY MR. CHOUDHRI) So it's your contention  
15 that your claim is secured by a lien on the property;  
16 is that correct?

17 A. I believe so, if that's what we filed.

18 Q. Okay. And you understand -- at least what  
19 you're representing here is that a lis pendens is a  
20 lien on property; correct?

21 A. I'm assuming that's what we're referring to,  
22 yes.

23 Q. Okay. Mr. Khawaja, you're familiar with the  
24 property Texas REIT that --

25 A. Yes.

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1 Q. Let me strike that. Let me strike that. It's  
2 a bad question. Let me clear the record here. Okay?

3 Mr. Khawaja, you're aware that debtor, Texas  
4 REIT, LLC, is in the Western District of the  
5 Bankruptcy Court.

6 MR. BALLASES: Objection. Form.

7 A. I guess. I mean, that's -- if that's where  
8 you chose to file it. I'm not sure.

9 Q. (BY MR. CHOUDHRI) You understand --

10 A. The property's located here in Houston, Harris  
11 County.

12 Q. So my question, Mr. Khawaja, is that you are  
13 aware that Texas REIT is the debtor that's in  
14 bankruptcy in the Western District.

15 A. Yes.

16 Q. And Texas REIT owns a property. Are you  
17 familiar with the property that Texas REIT owns?

18 A. Yes.

19 Q. What do you know about the property that Texas  
20 REIT owns?

21 MR. BALLASES: Objection. Form.

22 A. That you have defrauded your partners out of  
23 money in that property, that it's -- Walgreens left.  
24 It's falling apart; a lot of homeless, a lot of crack  
25 addicts in the area now. It's not maintained

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1 properly. It's part of this case, that there's a  
2 judgment against you on it, and it's basically -- and  
3 it's in Houston, yeah. It's in Houston, Texas, too.

4 Q. Anything else that you want to add to it?

5 A. No, that's it.

6 Q. When did you become familiar with this  
7 property?

8 A. I think in the course of just monitoring  
9 litigation against you.

10 Q. And remind me what kind of lawyer you are,  
11 Mr. Khawaja.

12 MR. BALLASES: Objection. Form.

13 A. I do plaintiff's work.

14 Q. (BY MR. CHOUDHRI) Is that personal injury  
15 mainly, what your --

16 A. Yes.

17 Q. -- focus is?

18 A. Yes, correct.

19 Q. Personal injury attorney?

20 A. Yes, correct.

21 MR. BALLASES: Objection. Form.

22 Q. (BY MR. CHOUDHRI) And, Mr. Khawaja, so you  
23 became familiar with this property through the course  
24 of litigation, you said?

25 A. Yes, just monitoring litigation.

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1 Q. When did you first become familiar with this  
2 property?

3 A. I couldn't say --

4 MR. BALLASES: Objection. Form.

5 A. I couldn't say when.

6 Q. (BY MR. CHOUDHRI) Were you involved in any  
7 way, shape, or form of filing any lis pendenses (sic)  
8 on this property?

9 A. No.

10 MR. BALLASES: Objection. Form.

11 Q. (BY MR. CHOUDHRI) You've never been involved  
12 of filing any lis pendenses on this property?

13 A. You mean --

14 MR. BALLASES: Objection. Form.

15 A. You mean other than the one that's in this --  
16 or is part of the bankruptcy case?

17 Q. (BY MR. CHOUDHRI) Mr. Khawaja, my question is  
18 very simple. Are you or have you ever been involved  
19 in filing, directly or indirectly, lis pendenses  
20 against the property that the debtor owns?

21 A. Not to my -- not to my understanding, no.

22 MR. BALLASES: Objection. Form.

23 A. I'm not sure what that has to do with the  
24 scope of this deposition either, by the way.

25 Q. (BY MR. CHOUDHRI) Do you know what a

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1 bankruptcy stay is, Mr. Khawaja? Do you know what an  
2 automatic --

3 A. Yes.

4 Q. -- stay is?

5 A. Yes.

6 THE REPORTER: I'm sorry. Do you know what  
7 a --

8 MR. BALLASES: Objection. Form.

9 THE REPORTER: -- what is? I'm sorry. Mr. --

10 MR. CHOUDHRI: An automatic -- an automatic  
11 stay.

12 THE REPORTER: Okay. Thank you.

13 A. You have more experience than I do on that,  
14 but I do know what it is, yes.

15 Q. (BY MR. CHOUDHRI) Have you violated any  
16 automatic stays?

17 MR. BALLASES: Objection. Form.

18 A. No, absolutely not.

19 Q. (BY MR. CHOUDHRI) Do you believe filing --  
20 okay. Who is Hira Azhar?

21 MR. BALLASES: Objection. Form. And instruct  
22 the client not to answer --

23 THE WITNESS: (Unintelligible)

24 MR. BALLASES: -- because it has nothing to  
25 do --



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1 A. It's not --

2 MR. BALLASES: -- with our proof of claim or  
3 the withdrawal of it, and it exceeds the judge's  
4 limitations on this depo. So I'm going to object to  
5 the question as harassing and oppressive and instruct  
6 the client not to answer.

7 THE WITNESS: Thank you.

8 Q. (BY MR. CHOUDHRI) Did you participate with  
9 Hira Azhar of filing a lis pendens against the subject  
10 property?

11 MR. BALLASES: Same objection, same assertions  
12 of privilege, same assertions of -- same objections  
13 and same instruction not to answer.

14 Q. (BY MR. CHOUDHRI) You can answer,  
15 Mr. Khawaja. What's your answer?

16 A. I will not answer on advice of counsel.

17 Q. Are you aware of any lis pendenses filed by  
18 Hira Azhar against the debtor's property?

19 MR. BALLASES: Objection. Same objections,  
20 same assertions of privilege, same instruction not to  
21 answer. This has nothing to do with the proof of  
22 claim in this matter or the reason for withdrawal.

23 A. I'm not going to answer.

24 Q. (BY MR. CHOUDHRI) Mr. Khawaja, has it been  
25 your motivation to prevent me or any of my entities

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1 from transacting business?

2 MR. BALLASES: Objection. Form.

3 A. No.

4 Q. (BY MR. CHOUDHRI) Is it your -- is it your  
5 habit to contact people that me or my entities are  
6 doing business with and tell them not to do business  
7 with me?

8 A. Never --

9 MR. BALLASES: Objection. Form.

10 A. Never done that.

11 MR. BALLASES: Can we please ask questions  
12 about the purpose for the deposition today, the reason  
13 for the filing of the proof of claim and the reason  
14 for the withdrawal, sir?

15 MR. CHOUDHRI: Mr. Ballases, stop wasting  
16 time. Keep it to objections.

17 Q. (BY MR. CHOUDHRI) Mr. Khawaja, do you -- what  
18 is your phone number?

19 MR. BALLASES: Object -- don't answer that.  
20 Objection --

21 Q. (BY MR. CHOUDHRI) Your cell --

22 A. You know my number. You've called me.

23 MR. BALLASES: Objection. Stop. Stop.

24 I'm going to instruct you not to answer. Your  
25 cell phone is not relevant to this proceeding today.

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1 You don't need to give it on the record.

2 It's oppressive -- objection of oppressive and  
3 harassing.

4 Q. (BY MR. CHOUDHRI) Mr. Khawaja, are you not  
5 gonna answer the question about what your cell phone  
6 is on the record today --

7 A. Correct.

8 Q. You refuse to answer --

9 A. Yeah, on advice of counsel --

10 THE REPORTER: I'm sorry --

11 A. On advice of counsel --

12 THE REPORTER: Just --

13 A. On advice of counsel --

14 THE REPORTER: -- one person --

15 THE WITNESS: Sorry.

16 THE REPORTER: -- at a time, please. Thank  
17 you.

18 THE WITNESS: On answering the question that  
19 Mr. Choudhri just asked, on advice of counsel, I will  
20 not answer that question.

21 Q. (BY MR. CHOUDHRI) Isn't it true that you've  
22 been involved with over 50 lis pendenses relating to  
23 Texas REIT or any other entity that I have ownership  
24 or control of?

25 A. No --

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1 MR. BALLASES: Objection. Form.

2 A. -- not true.

3 Q. (BY MR. CHOUDHRI) You have not participated

4 in any slander of title or fraudulent liens or

5 lis pendens on any properties that Texas REIT or I

6 own or control.

7 MR. BALLASES: Objection. Form.

8 A. Correct.

9 Q. (BY MR. CHOUDHRI) You've not participated or

10 been involved with any filing of any lis pendens

11 relating to the debtor's property.

12 A. That's correct.

13 MR. BALLASES: Objection. Form.

14 Are you referring to -- aside from the lis

15 pendens filed --

16 MR. CHOUDHRI: Sir -- no, Mr. Ballases. Stop.

17 Stop. Stop coaching the witness.

18 I'm going to object to you, your sidebar.

19 You're continually coaching the witness.

20 Please stop.

21 Q. (BY MR. CHOUDHRI) Mr. Khawaja, do you use --

22 MR. BALLASES: (Unintelligible)

23 Q. (BY MR. CHOUDHRI) -- text messaging as a form

24 of communication --

25 (Crosstalk)

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1 THE REPORTER: Sorry. I'm sorry. I'm getting  
2 two speakers again.

3 MR. BALLASES: Sure. I just -- I'm just  
4 trying to help Mr. Choudhri answer questions --

5 MR. CHOUDHRI: No, please don't help.

6 MR. BALLASES: -- on our --

7 MR. CHOUDHRI: Please don't help me. I don't  
8 need your help, Mr. Ballases. Please stop talking.

9 Object and limit your objections. Stop talking.

10 Q. (BY MR. CHOUDHRI) Mr. Khawaja, do you use  
11 text messaging as a form of communication?

12 MR. BALLASES: Objection. Form.

13 A. Occasionally, sure. I think we all do.

14 Q. (BY MR. CHOUDHRI) Have you texted Wayne  
15 Dolcefino?

16 A. No.

17 MR. BALLASES: Objection. Form.

18 Q. (BY MR. CHOUDHRI) Have you received any text  
19 messages from Wayne Dolcefino?

20 A. No.

21 MR. BALLASES: Objection. Form.

22 Q. (BY MR. CHOUDHRI) What's your answer,  
23 Mr. Khawaja?

24 A. No.

25 MR. BALLASES: Objection. Form.

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1 Q. (BY MR. CHOUDHRI) Have you ever paid Wayne  
2 Dolcefino directly or indirectly, in any way?

3 MR. BALLASES: Objection. Form.

4 A. (Unintelligible) no.

5 MR. BALLASES: I'm going to -- your answer is  
6 what?

7 THE WITNESS: My answer is no.

8 MR. BALLASES: The answer is no, but I'm going  
9 to instruct him not to answer any more questions that  
10 have nothing to do with the scope and purpose of this  
11 deposition pursuant to the judge's instruction.

12 MR. CHOUDHRI: Stop frivolously objecting,  
13 Mr. Ballases. He said he learned based on Wayne  
14 Dolcefino's videos, so I definitely have an  
15 opportunity to get into the line of questions that I  
16 need to get into, and you're going to continue to  
17 object and instruct him not to answer. Is that what  
18 you're going to say on the record?

19 MR. BALLASES: Objection. Sidebar.

20 Q. (BY MR. CHOUDHRI) Mr. Khawaja, just so the  
21 record is clear, you have not ever, in any way, shape,  
22 or form, paid Wayne Dolcefino any amount of money or  
23 consideration?

24 A. I'm not answering that question.

25 MR. BALLASES: Objection. Form.

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1 I'm going to instruct the client --

2 MR. CHOUDHRI: I --

3 MR. BALLASES: -- not to answer because it is  
4 oppressive and harassing and has nothing to do with  
5 the limited scope of the deposition, and he's already  
6 answered it.

7 Move along.

8 Q. (BY MR. CHOUDHRI) Are you not going to answer  
9 any questions relating to Wayne Dolcefino?

10 A. That means, yes, I'm not going to answer any  
11 questions relating to Wayne Dolcefino. He has nothing  
12 to do with this case at all.

13 Q. Well, can I ask you why? When Ms. Hood was  
14 asking you, you mentioned that you -- you mentioned  
15 Wayne Dolcefino and how you --

16 A. He --

17 MR. BALLASES: Objection. Form.  
18 (Crosstalk)

19 THE REPORTER: I'm sorry. One at a time,  
20 please.

21 THE WITNESS: I'm sorry. Go ahead.

22 MR. BALLASES: Objection. Form, for the  
23 record.

24 A. Well, can I answer? You asked very -- she  
25 asked me very specifically where did I learn about the

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1 potential for the claims that -- the basis of the  
2 claims that we filed against you in this case, and I  
3 answered, Through multiple sources, including Wayne  
4 Dolcefino. That's a factual answer.

5 Q. (BY MR. CHOUDHRI) And have you paid Wayne  
6 Dolcefino any amount of money --

7 MR. BALLASES: Objection. Form.

8 Q. (BY MR. CHOUDHRI) -- or consideration,  
9 directly or indirectly --

10 (Crosstalk)

11 MR. BALLASES: -- (unintelligible) not to  
12 answer your question.

13 MR. CHOUDHRI: Mr. Ballases --

14 THE REPORTER: I'm --

15 MR. CHOUDHRI: Mr. Ballases, would you please  
16 let the court reporter take her turn -- please take  
17 turns. When I'm asking the question, wait till my  
18 question is over before you need to --

19 MR. BALLASES: So you've asked -- you've asked  
20 this question three times, and he's answered it three  
21 times. And all three times, I've told him -- I've  
22 objected and told him not to answer. So you don't  
23 need to ask it a fourth time.

24 It's on the record clear. I know you're not  
25 an attorney, and you're not familiar with this, but



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1 it's on the record and it's clear, I promise. Move  
2 along.

3 Q. (BY MR. CHOUDHRI) So the record is clear,  
4 when I've asked you, Have you been -- have you paid  
5 Wayne Dolcefino any amount of money, directly or  
6 indirectly, or any consideration, your answer is: I'm  
7 not going to answer that question. Is that -- is that  
8 clear --

9 MR. BALLASES: Objection --

10 Q. (BY MR. CHOUDHRI) -- for the record?

11 MR. BALLASES: Objection. Form. I've --

12 A. I'm not going to answer that question.

13 MR. BALLASES: -- objected --

14 A. I've already asked it -- answered.

15 MR. BALLASES: -- to the form. It's  
16 oppressive and harassing. The client's already  
17 answered it. I'm instructing him not to answer  
18 because it's exceeding the scope of the deposition,  
19 and it's oppressive and harassing, and it's asked and  
20 answered.

21 Did you hear me, Mr. Choudhri?

22 MR. CHOUDHRI: Mr. Ballases, throughout today,  
23 you have been frustrating this deposition.

24 MR. BALLASES: Objection. Sidebar.

25 MR. CHOUDHRI: You have been disrupting -- so

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1 please refrain from your -- your sidebar and your  
2 objections. Limit to your objections as form.

3 Q. (BY MR. CHOUDHRI) So, Mr. Khawaja --

4 MR. BALLASES: Objection. Sidebar.

5 Q. (BY MR. CHOUDHRI) -- have you paid --

6 Mr. Khawaja, have you paid -- no, let me back up.

7 Mr. Khawaja, who is Wayne Dolcefino? What  
8 does he do?

9 MR. BALLASES: Objection --

10 A. I'm not going to answer these questions.

11 MR. BALLASES: Objection. Form.

12 A. I'm sorry. You've got to move on to the  
13 claim -- claim questions, Ali, or we're gonna end  
14 this.

15 Q. (BY MR. CHOUDHRI) So, Mr. Khawaja, are you  
16 going to tell me that you're not going to describe --

17 A. Yes.

18 Q. -- who Wayne --

19 A. I'm not going to.

20 Q. -- Dolcefino is, and you're not --

21 A. Correct.

22 MR. BALLASES: Objection. Form.

23 I'm going to instruct him not to answer  
24 because your questions are oppressive and harassing,  
25 and they exceed the scope of the limited deposition.

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1 I'm instructing him not to answer. I'm doing  
2 it, Mr. Ballases.

3 Q. (BY MR. CHOUDHRI) Are you taking his  
4 instructions and not answering any questions as it  
5 relates to Wayne Dolcefino, Mr. Khawaja?

6 A. Yes, sir. Yes. I'm not. I will follow  
7 advice of counsel.

8 Q. Who is Chris Wyatt, Mr. Khawaja?

9 A. Again, that has nothing to do with this case.

10 Q. So Chris Wyatt has nothing to do with this  
11 case. So -- I want the record clear.

12 A. I -- Chris Wyatt is a witness, and he is a --  
13 he was your former chief financial officer, and that's  
14 how I know him -- or chief operating officer.

15 Q. Has he ever given you documents from the  
16 Jetall server?

17 A. From the Jetall server? I don't -- I don't  
18 know that. I don't know the answer to that question.

19 Q. Has Mr. Wyatt --

20 A. I don't know what the Jetall server is.

21 Q. Has Mr. Wyatt ever given you any documents?

22 A. No.

23 Q. Mr. Chris Wyatt has never given you any  
24 documents; that's a true statement?

25 A. I cannot discuss anything pertaining to Chris

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1 Wyatt because of attorney-client privilege, so we're  
2 not talking about Chris Wyatt.

3 Q. What is the privilege, Mr. Khawaja, with you  
4 and Chris Wyatt?

5 A. Attorney-client privilege.

6 Q. Is Chris Wyatt an attorney?

7 A. No, no. I'm the attorney; he's the client.

8 He sought counsel from me, which I provided,  
9 pertaining to this case, and I will not discuss  
10 anything further regarding him.

11 Q. Pertaining to this case, the case we're here  
12 for today.

13 A. No, pertaining to other matters involving you  
14 and him.

15 Q. So Chris Wyatt is your client; is that  
16 correct?

17 A. Yes.

18 MR. BALLASES: Objection --

19 Q. (BY MR. CHOUDHRI) And Hira Azhar is your  
20 client; correct?

21 A. Yes.

22 Q. And Azeemah Zaheer is your client; correct?

23 A. Yes.

24 MR. BALLASES: Objection. Form.

25 Q. (BY MR. CHOUDHRI) And Osama -- and Osama

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1 Abdullatif is your client; correct?

2 A. Yes.

3 MR. BALLASES: Objection. Form.

4 Q. (BY MR. CHOUDHRI) Is David Tang your client?

5 A. No.

6 MR. BALLASES: Objection. Form.

7 A. He's just a friend.

8 Q. (BY MR. CHOUDHRI) Is Rodney Drinnon your

9 client?

10 MR. BALLASES: Objection. Form.

11 A. No.

12 Q. (BY MR. CHOUDHRI) Is Harold Polk --

13 A. He's an attorney.

14 Q. -- your client? Is Harold Polk your client?

15 MR. BALLASES: Objection. Form.

16 A. No, he's not.

17 Q. (BY MR. CHOUDHRI) Harold Polk is not your

18 client.

19 A. Correct.

20 MR. BALLASES: Objection. Form.

21 Q. (BY MR. CHOUDHRI) How did you meet Chris

22 Wyatt?

23 MR. BALLASES: Objection. Form.

24 A. Yeah, I can't talk about that. I'm sorry.

25 Q. (BY MR. CHOUDHRI) Why can't you talk about

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1 how you met Chris Wyatt?

2 A. That's protected.

3 Q. By what?

4 A. Attorney-client privilege.

5 Q. Are you refusing to answer when you met Chris

6 Wyatt?

7 A. Yes.

8 Q. When did the attorney-client privilege start

9 with Chris Wyatt?

10 MR. BALLASES: Objection. Form.

11 A. Since I met him.

12 Q. (BY MR. CHOUDHRI) And when did you meet him?

13 MR. BALLASES: Objection. Form.

14 A. Sometime after he left your employment.

15 Q. (BY MR. CHOUDHRI) You never met him while he

16 was employed as a paralegal for me?

17 A. No.

18 MR. BALLASES: Objection. Form.

19 Q. (BY MR. CHOUDHRI) You never saw him come to

20 court in the divorce case when you were representing

21 the -- Hira Azhar?

22 MR. BALLASES: Objection. Form.

23 A. No, I didn't, actually, to be honest with you.

24 No.

25 Q. (BY MR. CHOUDHRI) And you're not aware that

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1 Chris Wyatt worked on the case that Jetall has against  
2 Khawaja?

3 A. No --

4 MR. BALLASES: Objection. Form.

5 A. -- I'm not aware of that.

6 Q. (BY MR. CHOUDHRI) You're not aware of that --

7 A. If he --

8 Q. -- is that correct?

9 A. Correct. If he did, he never discussed it  
10 with me.

11 Q. So you're not aware that Chris Wyatt did legal  
12 work for me while he was employed for me.

13 MR. BALLASES: Objection. Form.

14 A. No.

15 Q. (BY MR. CHOUDHRI) Isn't it true that Jetall  
16 Companies has a judgment against Khawaja?

17 MR. BALLASES: Objection. Form.

18 A. "Against Khawaja," what does that mean?

19 Q. (BY MR. CHOUDHRI) Against Khawaja Partners.

20 A. Possibly.

21 MR. BALLASES: Objection. Form.

22 Q. (BY MR. CHOUDHRI) And that judgment has not  
23 been appealed and not been superceded.

24 A. Yes.

25 Q. Is that one --

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1 MR. BALLASES: Objection. Form.

2 Q. (BY MR. CHOUDHRI) -- of your motivations,

3 Mr. Khawaja?

4 MR. BALLASES: Objection. Form.

5 A. No.

6 Q. (BY MR. CHOUDHRI) So Jetall owns an asset --

7 Jetall Companies owns an asset, and that's a judgment

8 against Khawaja Partners; correct?

9 MR. BALLASES: Objection. Form.

10 A. I don't know if Jetall owns an asset or --

11 Jetall doesn't seem to be doing too well right now.

12 Q. (BY MR. CHOUDHRI) And how do you know that?

13 MR. BALLASES: Objection. Form.

14 A. I mean, there was a great article about you

15 the other day in The Real Deal. I don't know if you

16 saw that.

17 Q. (BY MR. CHOUDHRI) Have you spoken to The Real

18 Deal?

19 A. I haven't --

20 MR. BALLASES: Objection. Form.

21 A. -- but I read that article.

22 THE REPORTER: Sorry --

23 A. It's not a good look.

24 Q. (BY MR. CHOUDHRI) You haven't spoken --

25 THE REPORTER: Sorry. Sorry. Just one at a



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1 time, please. Thank you.

2 A. I haven't, no.

3 Q. (BY MR. CHOUDHRI) Has anybody on your behalf,  
4 indirectly or directly, spoken to The Real Deal?

5 MR. BALLASES: Objection. Form.

6 A. No, but a lot of people sent me that article,  
7 like real estate -- people in real estate, legal. A  
8 lot of people sent it to me.

9 Q. (BY MR. CHOUDHRI) And Chris Wyatt testified  
10 at the that hearing; correct?

11 MR. BALLASES: Objection. Form.

12 A. I don't --

13 MR. BALLASES: What hearing are you talking  
14 about, sir? I mean, come on.

15 MR. CHOUDHRI: Mr. Ballases --

16 A. You're all over the place.

17 MR. CHOUDHRI: -- can you --

18 Q. (BY MR. CHOUDHRI) Mr. Khawaja, The Real Deal  
19 quotes an order and mentions Chris Wyatt.

20 MR. BALLASES: Objection. Form.

21 A. Okay. Anything else you want to share with me  
22 about the article? I mean, that's fine.

23 Q. (BY MR. CHOUDHRI) And so have you paid Chris  
24 Wyatt any money?

25 A. No.

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1 MR. BALLASES: Objection. Form.

2 Q. (BY MR. CHOUDHRI) Mr. Khawaja, you had  
3 mentioned that you're in the business of buying  
4 judgments. Do you recall that line of testimony  
5 earlier?

6 A. Yes.

7 Q. And you've bought less than ten judgments; is  
8 that correct?

9 A. I think so.

10 Q. And your answers earlier were -- and I just  
11 want to make sure the record is clear --

12 MR. BALLASES: Objection. Sidebar.

13 Q. (BY MR. CHOUDHRI) -- that the only --  
14 Mr. Khawaja, are you done looking at your phone?

15 A. Yes. Sorry. Go ahead.

16 MR. CHOUDHRI: Just for the record, throughout  
17 the deposition, Mr. Khawaja has been continuing to  
18 look at his phone and make communications with other  
19 people in the room and has constantly looked at his  
20 phone throughout the entire duration of this  
21 deposition.

22 Q. (BY MR. CHOUDHRI) So, Mr. Khawaja, I just ask  
23 you to please refrain from looking at your phone.  
24 Okay?

25 MR. BALLASES: Objection. Sidebar.

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1 Don't instruct my client anything, and you are  
2 incorrect with your assertions.

3 MR. CHOUDHRI: Mr. Ballases, please stop  
4 talking.

5 Q. (BY MR. CHOUDHRI) Mr. Khawaja, can you please  
6 stop looking at your phone?

7 MR. BALLASES: Objection. Sidebar.

8 A. I've got a sick relative in the hospital right  
9 now. That's what I'm worried about, so...

10 Q. (BY MR. CHOUDHRI) Well, I'm sorry about your  
11 relative. I hope they get better.

12 Mr. Khawaja, which judgments -- strike that.

13 Mr. Khawaja, it's your contention that any  
14 entity that I -- at least if I heard your testimony  
15 correctly earlier, that any entity that Ali Choudhri  
16 has ownership or control in is an alter ego. Is that  
17 your contention --

18 A. Of Ali --

19 Q. -- Mr. Khawaja?

20 A. Yes, it is.

21 MR. BALLASES: Objection. Form.

22 Q. (BY MR. CHOUDHRI) So any entity that Ali  
23 Choudhri has any ownership or control of is an alter  
24 ego of Ali Choudhri; correct?

25 A. I believe that -- I believe that to be the

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1 case, yes.

2 MR. BALLASES: Objection. Form.

3 Q. (BY MR. CHOUDHRI) Okay. Mr. Khawaja, which  
4 judgments have you acquired?

5 MR. BALLASES: Objection. Form.

6 A. You mean other than yours? Other than the  
7 Jetall judgments?

8 Q. (BY MR. CHOUDHRI) Again, Mr. Khawaja --

9 A. Are you there?

10 Q. -- I believe your answers earlier were that  
11 you have not acquired any judgments other than  
12 judgments relating to Jetall or Ali Choudhri.

13 A. I think that's --

14 Q. Is that true?

15 A. -- correct. That's true.

16 MR. BALLASES: Objection. Form.

17 Q. (BY MR. CHOUDHRI) So what I want to do is I  
18 want to go down, because your contention is Texas REIT  
19 is an alter ego of Ali Choudhri; correct?

20 A. Yes.

21 MR. BALLASES: Objection. Form.

22 Q. (BY MR. CHOUDHRI) So basically what you're  
23 saying is any obligations of Ali Choudhri or any of  
24 Ali Choudhri's entities are the obligations of Texas  
25 REIT; is that correct?

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1 A. Yes. That's correct, yes.

2 Q. So it's just basically one big pot.

3 A. That's the way you've treated them, yes.

4 Q. And that's your contention, and that's the --

5 A. I believe the evidence will show that. Yes.

6 Q. And outside what's in your pleading, you don't

7 have any other evidence that --

8 MR. BALLASES: Objection. Form.

9 A. Well, we've got to do discovery -- we have to

10 do discovery, sir, which you're obstructing, but yes.

11 Q. (BY MR. CHOUDHRI) Okay. So the record is

12 clear, outside your pleading, there's no other

13 evidence other than the discovery you're yet to do.

14 MR. BALLASES: Objection. Form.

15 Q. (BY MR. CHOUDHRI) Is that correct?

16 A. We're in the -- we're in the middle of

17 discovery.

18 MR. BALLASES: Objection. Form.

19 Q. (BY MR. CHOUDHRI) Is that correct?

20 MR. BALLASES: Objection. Form.

21 A. Outside the pleading? The pleading contains a

22 lot of evidence. I don't know if you've seen the

23 attachments or not, but there's a lot. There's a lot

24 more that will have to be done.

25 Q. (BY MR. CHOUDHRI) And so you're refusing to

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1 answer any questions relating to Chris Wyatt; correct?

2 A. Yes.

3 MR. BALLASES: Objection. Form.

4 A. That's -- that encompasses attorney-client  
5 privilege. Correct.

6 Q. (BY MR. CHOUDHRI) So anything I would ask you  
7 today about Chris Wyatt, you would refuse to answer.

8 A. That's correct.

9 MR. BALLASES: Objection. Form.

10 Q. (BY MR. CHOUDHRI) Who drafted the affidavit  
11 that was attached to the petition that's attached to  
12 this proof of claim that Chris Wyatt signed?

13 MR. BALLASES: Objection. Form.

14 A. I have no idea.

15 Q. (BY MR. CHOUDHRI) You don't know --

16 A. It wasn't me.

17 Q. -- who drafted -- it wasn't you. Was it  
18 Mr. Ballases?

19 MR. BALLASES: Objection. Form.

20 Instructing not to answer. It violates  
21 attorney work product, attorney-client privilege.

22 A. I'm not answering on advice of counsel.

23 Q. (BY MR. CHOUDHRI) Does Mr. Ballases or Hoover  
24 Slovacek represent Chris Wyatt?

25 A. I don't think so.

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1 Q. Does Ashish Mahendru represent Chris Wyatt?

2 MR. BALLASES: Objection. Form.

3 A. I don't know. I mean, ask Ashish.

4 Q. (BY MR. CHOUDHRI) Did you refer Chris Wyatt  
5 to Ashish Mahendru?

6 MR. BALLASES: Objection. Form.

7 A. I mean, again, I just told you I'm not  
8 answering any questions about Chris Wyatt.

9 Q. (BY MR. CHOUDHRI) So can you explain to me  
10 why the adversary where you claim alter ego and  
11 fraudulent transfer has an attachment of Chris Wyatt  
12 as a declaration?

13 A. I mean, he had some evidence that you are an  
14 alter ego, that you have alter egos that operate under  
15 you, so he provided it. It's evidence.

16 Q. Do you hold any -- do you hold any contingency  
17 claims or rights of any adverse parties to Ali  
18 Choudhri or any of his related entities?

19 MR. BALLASES: Objection. Form.

20 A. Do I hold any -- I mean, if I did, it's  
21 attorney-client privilege, so I'm not answering that.

22 Q. (BY MR. CHOUDHRI) So any contingency claims  
23 you hold against --

24 A. Right.

25 Q. -- Texas REIT or any other entity --

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1 A. Yes.

2 Q. -- or party relating to Ali Choudhri is --

3 you're not going to answer because it's

4 attorney-client privilege?

5 A. Yes.

6 MR. BALLASES: Objection. Form.

7 A. And outside the scope of what you're allowed

8 to ask me about.

9 Q. (BY MR. CHOUDHRI) Mr. Khawaja, do you have  
10 surveillance on me or any of my entities or companies?

11 MR. BALLASES: Objection. Form.

12 I'm going to instruct you not to answer. It's  
13 harassing and oppressive. It has nothing to do with  
14 the limited scope of this deposition.

15 A. I'm not answering that.

16 Q. (BY MR. CHOUDHRI) Do you have any agreement  
17 with George Lee?

18 MR. BALLASES: Objection. Form.

19 A. I don't.

20 MR. BALLASES: It's not relevant to the  
21 limited scope of this deposition; therefore, I'm going  
22 to instruct him not to answer.

23 A. I should be asking you that question. It's  
24 gonna come up in trial.

25 Q. (BY MR. CHOUDHRI) Do you have any text



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1 messages between you and George Lee?

2 MR. BALLASES: Object --

3 A. No --

4 MR. BALLASES: Objection. Form.

5 A. -- I'm not gonna talk about that.

6 MR. BALLASES: And I'm going to instruct  
7 him not to --

8 A. It has nothing to do with this.

9 MR. BALLASES: I'm going to instruct you not  
10 to answer. It violates the scope of this deposition  
11 that the judge indicated. It's harassing and  
12 oppressive. This isn't a free-for-all discovery.

13 THE WITNESS: Yeah.

14 MR. BALLASES: It's just about why the proof  
15 of claim was filed or why it's being withdrawn.

16 Q. (BY MR. CHOUDHRI) So is it your contention  
17 that you have information you've received from Chris  
18 Wyatt that has to do with the basis of your claim?

19 MR. BALLASES: Objection. Form.

20 A. I mean, he provided an affidavit in this case,  
21 so...

22 Q. (BY MR. CHOUDHRI) So again, when did he  
23 become your client, and when did you establish that  
24 attorney-client privilege?

25 MR. BALLASES: Objection. Form.

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1 A. I'm not sure when.

2 Q. (BY MR. CHOUDHRI) Do you have text messages  
3 between you and Chris Wyatt?

4 MR. BALLASES: Objection. Form.

5 A. I mean, if I did, I wouldn't disclose them to  
6 you, and nor would a court compel me to. It's  
7 attorney-client privilege.

8 Q. (BY MR. CHOUDHRI) Well, here's the thing,  
9 Mr. Khawaja. Here's the thing. There's something  
10 called a privilege log, right? I'm entitled to know  
11 if you have communications. I'm not asking you --

12 MR. BALLASES: Objection. Sidebar.

13 Q. (BY MR. CHOUDHRI) -- about the content of  
14 your communications.

15 MR. CHOUDHRI: Mr. Ballases, please stop  
16 interrupting.

17 Q. (BY MR. CHOUDHRI) Mr. Khawaja, I'm not asking  
18 you about the contents of your --

19 MR. BALLASES: (Unintelligible)

20 Q. (BY MR. CHOUDHRI) Let me finish my question  
21 before you answer. Okay?

22 I'm asking you not about -- so we're very  
23 clear, I'm not eliciting or asking you for privileged  
24 information. I'm asking you if there are  
25 communications, not the contents. Do you have --

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1 A. Even if it existed --

2 Q. -- communications with Chris -- can I finish?

3 Do you have communications with Chris Wyatt,  
4 yes or no?

5 MR. BALLASES: Objection. Form.

6 A. Even if it existed, I would not disclose that  
7 to you, nor would I be compelled to, nor is it a part  
8 of this case.

9 Q. (BY MR. CHOUDHRI) So why are you adding the  
10 declaration of Chris Wyatt as a part of this case?

11 MR. BALLASES: Objection. Form.

12 A. It's evidence.

13 Q. (BY MR. CHOUDHRI) Well, do you understand  
14 what a sword --

15 A. It's evidence of the alter (unintelligible).

16 Q. -- and shield is?

17 THE REPORTER: I'm sorry --

18 Q. (BY MR. CHOUDHRI) It's evidence of the alter  
19 ego?

20 I'm sorry. Finish your question -- your  
21 answer, Mr. Khawaja. It's --

22 A. It's evidence --

23 Q. -- evidence of what?

24 A. -- of the alter ego. It's evidence of the  
25 alter ego.

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1 Q. So Chris Wyatt has evidence of the alter ego.

2 That's your answer?

3 A. Yes.

4 Q. And you're refusing to answer any questions  
5 about Chris Wyatt.

6 A. I'm not gonna talk about any attorney-client  
7 privileged communications. Correct.

8 Q. So do you have any communications with Chris  
9 Wyatt, yes or no?

10 MR. BALLASES: Objection. Form.

11 A. I'm not gonna talk about it.

12 MR. BALLASES: Objection. Form.

13 MR. CHOUDHRI: Mr. Ballases, being emphatic on  
14 your objection doesn't change the objection.

15 Q. (BY MR. CHOUDHRI) Mr. Khawaja --

16 MR. BALLASES: Objection. Sidebar.

17 Q. (BY MR. CHOUDHRI) -- are you refusing to --  
18 are you refusing to answer the mere fact that  
19 communications exist between you and Chris Wyatt?

20 MR. BALLASES: Objection. Form.

21 A. I'm telling you that if they do exist -- I'm  
22 not confirming that they do or don't, but they would  
23 be privileged. That's it. And this is not the  
24 case --

25 Q. (BY MR. CHOUDHRI) So how did --

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1 A. This is not the case that you're going to get  
2 any of that information.

3 Q. Now, you'll agree with me that Chris Wyatt --  
4 that in your petition in adversary that you've  
5 attached to this proof of claim, you've attached a  
6 declaration of Chris Wyatt, true or false?

7 A. True.

8 Q. And you're refusing to provide me any  
9 communications or the fact that any communications  
10 even exist between you and Chris Wyatt, true?

11 MR. BALLASES: Objection. Form.

12 A. True.

13 Q. (BY MR. CHOUDHRI) Mr. Khawaja, would you  
14 please stop looking at your phone?

15 A. I'm not looking at my phone. I'm looking at  
16 the petition that you just asked me about, the  
17 adversary.

18 MR. BALLASES: Objection. Sidebar.

19 Don't instruct my client again.

20 A. This is the adversary petition I'm reading.

21 Q. (BY MR. CHOUDHRI) Mr. Khawaja, what  
22 contingency claims, if any, do you hold, indirectly or  
23 directly, against me or any of my entities?

24 MR. BALLASES: Objection. Form.

25 A. Outside the scope of this discussion. I'm not

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1 answering.

2 Q. (BY MR. CHOUDHRI) So, Mr. Khawaja, it's your  
3 contention that Texas REIT is an alter ego of every  
4 one of those entities that I have interest in;  
5 correct? That's your contention.

6 MR. BALLASES: Objection. Form.

7 Q. (BY MR. CHOUDHRI) You're refusing to answer  
8 what claims -- so is your statement or answer here,  
9 under oath, that you're refusing to answer what  
10 motivations and rights or claims or contingencies you  
11 have against Texas REIT? Now, when I --

12 MR. BALLASES: Objection. Form.

13 Q. (BY MR. CHOUDHRI) -- say "Texas REIT," that  
14 applies to any and all entities that I have ownership  
15 in, directly or indirectly; correct?

16 A. Yes, based on alter ego. Yeah, I'm not gonna  
17 give you any -- whether I have any contingency-related  
18 litigation against you on that. If I do, you'll find  
19 out about it at some point.

20 Q. So you're refusing to disclose any claims you  
21 have against the debtor.

22 MR. BALLASES: Objection. Form.

23 A. Any claims I have against the debtor? I don't  
24 have any claims against the debtor other than the ones  
25 I presented in this case.

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1 Q. (BY MR. CHOUDHRI) So when you have  
2 contingencies or claims against me, under your theory,  
3 those would be claims against the debtor as well.

4 MR. BALLASES: Objection. Form.

5 A. I don't know about that.

6 Q. (BY MR. CHOUDHRI) Do you use WhatsApp?

7 A. Yes.

8 MR. BALLASES: Objection. Form.

9 Q. (BY MR. CHOUDHRI) Have you communicated --

10 A. We're in some group -- we're in some groups  
11 together on WhatsApp, I think. Yes.

12 Q. Mr. Khawaja, did you come to me for a job?

13 MR. BALLASES: Objection. Form.

14 A. A job? I'm not talking about that, no.

15 Q. (BY MR. CHOUDHRI) You never came to me for a  
16 job.

17 A. No. Look, that's outside the scope of this  
18 conversation.

19 MR. CHOUDHRI: Mr. Osama Abdullatif needs to  
20 stop talking in the background and coaching the  
21 witness.

22 MR. BALLASES: Objection. Sidebar.

23 MR. CHOUDHRI: Mr. Ballases, please stop.  
24 Control Mr. Osama --

25 MR. BALLASES: Objection. Sidebar.

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1 MR. CHOUDHRI: -- (unintelligible) your  
2 witnesses.

3 Q. (BY MR. CHOUDHRI) Mr. Khawaja --

4 MR. BALLASES: Objection. Sidebar.

5 Q. (BY MR. CHOUDHRI) -- would you mind sharing  
6 the camera around your office there?

7 A. We're not gonna do that.

8 Q. You're not gonna do that? Okay. You're  
9 refusing to do that.

10 MR. BALLASES: Objection. Sidebar.

11 Objection. Form.

12 Q. (BY MR. CHOUDHRI) Mr. Khawaja, did you ever  
13 seek employment from Jetall Companies?

14 MR. BALLASES: Objection. Form.

15 I'm going to instruct the client not to  
16 answer. It's harassing and oppressive. It exceeds  
17 the limited scope of this deposition per the judge's  
18 instructions.

19 Stop wasting time, sir.

20 Q. (BY MR. CHOUDHRI) You can answer,  
21 Mr. Khawaja.

22 A. On advice of counsel, I'm not gonna answer  
23 that question. Sorry.

24 Q. Are you upset at Jetall Companies in any way,  
25 shape, or form?



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1 A. No.

2 Q. Are you upset at Ali Choudhri in any shape,  
3 way, or form?

4 A. I mean, I want the money that I'm owed. Just  
5 pay me the money that you owe. This will -- this will  
6 go away. It's nothing personal.

7 Q. And how much money would it take to make this  
8 go away?

9 MR. BALLASES: Objection. Form.

10 We're not -- I'm going to instruct my client  
11 not to answer. It has nothing do with the limited  
12 scope of this deposition and exceeds what the judge's  
13 orders were.

14 Q. (BY MR. CHOUDHRI) Are you going to answer the  
15 question, Mr. Khawaja?

16 A. I'm gonna follow the advice of counsel and not  
17 answer.

18 Q. So you say this is about money; Just pay me  
19 the money you owe me, and I'll go away. But you won't  
20 tell me what that amount is. Is that your answer?

21 MR. BALLASES: Objection. Form.

22 A. Yeah, we're not --

23 MR. CHOUDHRI: Is Osama Abdullatif --

24 A. -- in a settlement --

25 Q. (BY MR. CHOUDHRI) No, this is not a

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1 settlement. I'm asking you -- again, this is not  
2 settlement discussion. This is a deposition under  
3 oath on the record.

4 I'm asking you a follow-up to your answer that  
5 this is not personal; it's about money. That's all  
6 you want. You want money, and you'll go away. That's  
7 what you said. Did I hear -- did I hear your  
8 answer --

9 MR. BALLASES: Objection --

10 Q. (BY MR. CHOUDHRI) -- incorrectly, or do we  
11 need the court reporter to repeat your answer?

12 MR. BALLASES: Objection. Form.

13 Objection. Sidebar.

14 Q. (BY MR. CHOUDHRI) Are you answering the  
15 question --

16 A. You need to move along, sir. I'm not going to  
17 answer that question.

18 MR. CHOUDHRI: Ms. Court Reporter, would you  
19 read back his statement or his answer earlier: This  
20 is not personal; it's just money; if you pay me the  
21 money you owe me, I'll go away.

22 Would you read that back into the record so  
23 it's clear? There's been a lot of objections, and  
24 I've been distracted.

25 THE REPORTER: I'll need a minute to go

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1 through and find that answer.

2 MR. CHOUDHRI: Take your time. No problem.

3 Mr. Khawaja is not on the screen any longer,  
4 for the record.

5 MR. BALLASES: Yeah, he is.

6 MR. CHOUDHRI: Mr. --

7 THE REPORTER: Sorry. Just off the record. I  
8 just need to go off the record because I can't type  
9 and look for the testimony at the same time.

10 MR. CHOUDHRI: So why don't we take a five --

11 THE WITNESS: Can you see me?

12 MR. CHOUDHRI: I'll tell you what. Why don't  
13 we do this, Ms. Court Reporter. It looks like we've  
14 been going for a little bit here. So it's 2:42. Why  
15 don't we come back in 15 minutes at 3:00.

16 MR. BALLASES: No, we'll take a five-minute  
17 break.

18 THE WITNESS: We'll take a five-minute break,  
19 and that's it. We're done.

20 MR. CHOUDHRI: Again, Mr. Khawaja, this is my  
21 deposition. I get to ask questions. And with all due  
22 respect, you really don't dictate the -- but if you  
23 need to take a break, I'm happy to let you take a  
24 break --

25 THE WITNESS: I'll take a five-minute break,

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1 and that's it.

2 No? Okay. No, we don't need a break. Thank  
3 you.

4 MR. CHOUDHRI: So, Court Reporter, while  
5 you're looking for the answer, let's go and take a  
6 five-minute break. We'll come back in five minutes.  
7 We're off the record.

8 (A recess was taken.)

9 THE REPORTER: So we are back on the record.  
10 And I just please ask everybody, in order to keep the  
11 record clear, please, one speaker at a time.

12 And, Mr. Khawaja, if your counsel does have an  
13 objection, just please allow him to make the objection  
14 and then answer afterwards, just so I don't have both  
15 of you speaking. Thank you.

16 THE WITNESS: All right. Thank you.

17 MR. BALLASES: So just for the record,  
18 Ms. Court Reporter, we've looked at the live schedule  
19 that was filed by the debtor under declaration of  
20 penalty and was signed by Mr. Ali Choudhri, and it  
21 does not list Mr. Choudhri as a debtor anywhere on  
22 here, and therefore -- or excuse me -- as a creditor  
23 anywhere on here. And so, therefore, him not being a  
24 creditor based upon his own sworn document, he has no  
25 legal basis to continue to ask questions here today.

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1 So I'd like to have -- if Ms. Hood or  
2 Mr. Sather have any more questions, I'd like to finish  
3 it up. Mr. Khawaja does have to go because he has a  
4 relative who is probably passing away relatively soon  
5 in the hospital. We can then move on --

6 MR. CHOUDHRI: So --

7 MR. BALLASES: -- with the next deponents.

8 MS. HOOD: So --

9 MR. CHOUDHRI: So, Mr. Ballases --  
10 Mr. Ballases, this is my deposition. If you want --  
11 if there is a life/death situation, I'm not -- I'm  
12 happy to work with you and Mr. Khawaja on schedules.  
13 I have no problem doing that. Family's important. So  
14 if we need to reset this deposition to tomorrow or  
15 another day, I'm happy to accommodate that.

16 But what I don't want to do is have you  
17 control the deposition and who can ask questions and  
18 who can't, because I'm in the middle of my questioning  
19 of Mr. Ballases (sic). So --

20 MR. BALLASES: Okay. So --

21 MR. CHOUDHRI: -- let's continue on with the  
22 questions.

23 Q. (BY MR. CHOUDHRI) Mr. Khawaja, are you ready  
24 to answer more questions?

25 THE WITNESS: What do you think, Michael?

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1 MR. BALLASES: It's up to you. If you've got  
2 to go to the hospital, then --

3 A. Okay. I can go for a little bit longer.

4 MR. CHOUDHRI: Okay. Madam Court Reporter,  
5 would you please read the answer back while we took a  
6 break?

7 THE REPORTER: Okay. One second. Okay. So  
8 the question and answer was (Reading:) Question: Are  
9 you upset at Ali Choudhri in any way, shape, or form?

10 Answer: I mean, I want the money that I'm  
11 owed. Just pay me the money that you owe. This will  
12 go away. It's nothing personal.

13 Q. (BY MR. CHOUDHRI) Mr. Khawaja, did she read  
14 your answer correctly and accurately?

15 A. Yes.

16 Q. And so to follow up on that answer, what is  
17 the amount of the money that you claim you're owed?

18 A. Well, there's a certain amount of -- there's a  
19 certain amount that's claimed in the judgment that  
20 probably has gone up since we filed it. And, you  
21 know, you can go through that. Your attorney can  
22 discuss that with my attorney if you want to make an  
23 offer. Someone will --

24 Q. I'm not asking about a settlement,  
25 Mr. Khawaja. I'm just asking about how much money

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1 you're owed, because I can go to the oral ruling  
2 that -- from Judge Robinson about how you came up with  
3 the number, how you calculated it, and what that  
4 number is. And that's what we're here today to ask  
5 you questions about on your proof of claim.

6 So you said, Owe me -- pay me the money you  
7 owe, so my question is --

8 A. Right.

9 Q. -- what are you claiming you're owed?

10 A. Do you have a copy of the adversary?

11 Q. Go ahead, Mr. Khawaja. What is the amount of  
12 money you're owed? That's my question. Do you know?

13 A. Yeah, it's somewhere north of \$500,000. Give  
14 me one second here.

15 The total amount is \$4,847,894.68.

16 Q. I'm sorry. Would you repeat that again? The  
17 total amount that you're owed is what?

18 A. \$4,847,894.68.

19 Q. Sorry. There's somebody talking in the  
20 background. I think Osama's helping you and talking,  
21 so --

22 MR. BALLASES: Objection. Sidebar.

23 Q. (BY MR. CHOUDHRI) So what is the total amount  
24 that you need to be paid so you can go away?

25 MR. BALLASES: Objection. Form.

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1 A. \$4,847,894.68.

2 Q. (BY MR. CHOUDHRI) Okay. Thank you for your  
3 answer, Mr. Khawaja.

4 And you stand behind that number as being  
5 truthful, accurate with all lawful offsets?

6 A. I mean, I don't -- I don't know what that  
7 means, but yeah, it's truthful, for sure.

8 Q. Okay.

9 A. There are no offsets.

10 Q. There are no offsets?

11 A. No.

12 Q. Is that what you said?

13 Okay. So there are no offsets; is that  
14 correct?

15 A. That's correct.

16 Q. Okay. Mr. Khawaja, is that the basis of -- so  
17 let me just kind of set the table for a second.

18 So we said this earlier, and I just want to  
19 make sure that I don't have to go through a list of,  
20 you know, all these entities and all these other  
21 parties.

22 So when we talk about Texas REIT, when you  
23 answer the question that -- against Texas REIT, your  
24 position is that any entity that I have ownership,  
25 directly in or indirectly, is an alter ego of Texas



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1 REIT; correct?

2 MR. BALLASES: Objection. Form.

3 A. Alter ego of Ali Choudhri. Yes.

4 Q. (BY MR. CHOUDHRI) Okay. So --

5 A. And Jetall Companies.

6 Q. -- that's the basis?

7 THE REPORTER: I'm sorry?

8 Q. (BY MR. CHOUDHRI) And Jetall. So when the --

9 THE REPORTER: And who? Sorry.

10 THE WITNESS: Sorry. Of Ali Choudhri and

11 Jetall Companies.

12 THE REPORTER: Thank you.

13 Q. (BY MR. CHOUDHRI) And so that is the basis of

14 several lis pendenses that have been filed; is that

15 correct?

16 A. I don't know about several. There's one

17 that's filed in this case.

18 Q. Well, if you contend that any and all

19 liabilities and assets of Texas REIT's are alter egos

20 of Ali Choudhri, you have -- in this adversary that is

21 the basis of your proof of claim -- back up.

22 This proof -- the adversary is the basis of

23 your proof of claim; correct?

24 A. Yes.

25 Q. So in that adversary, you have filed many lis

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1 pendenses on various properties, true or false?

2 A. Yes.

3 Q. And what real property interest do you contend  
4 that you own in any of these properties?

5 A. We're a judgment creditor. So if you own it,  
6 we own it.

7 Q. So it's your contention that -- again, I just  
8 want to get the whole scope here. It's your  
9 contention that, based on the fact that you're a  
10 judgment creditor, you have real property interest in  
11 all these various properties, true or false?

12 A. Yes.

13 Q. Is that true?

14 A. True.

15 Q. Outside of that, do you have any other real  
16 property interest that you contend you own in any of  
17 these properties?

18 A. No.

19 Q. And do you know where I live?

20 MR. BALLASES: Objection. Form.

21 A. I think you live in 9201 Arabella.

22 Q. (BY MR. CHOUDHRI) 9201 Arabella?

23 MR. BALLASES: Objection. Form.

24 A. Let me see here. Ninety -- sorry -- 9201.

25 You live at Arabella PH, whatever property Arabella PH

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1 3201, LLC, owns. At the Arabella, I think, unless you  
2 moved.

3 Q. (BY MR. CHOUDHRI) And you have knowledge that  
4 I've lived there for how long?

5 MR. BALLASES: Objection. Form.

6 A. I mean, I guess at least a few years. Maybe  
7 two.

8 Q. (BY MR. CHOUDHRI) And are you aware that --

9 A. You sold your house and then -- I think so. I  
10 mean, look, I -- I'm not sure, to be honest with you.  
11 I think you live there. I can find out if you want me  
12 to.

13 Q. So you said I sold my house?

14 MR. BALLASES: Ali, can -- Mr. Choudhri, can  
15 you put yourself on the screen again so we know it's  
16 you asking questions?

17 Q. (BY MR. CHOUDHRI) So you said --

18 MR. BALLASES: Thank you.

19 Q. (BY MR. CHOUDHRI) -- I sold my house,  
20 Mr. Khawaja, that you know I sold my house?

21 A. Yeah.

22 MR. BALLASES: Objection. Form.

23 A. You sold the River Oaks house; right?

24 Q. (BY MR. CHOUDHRI) I'm asking you,  
25 Mr. Khawaja. You said I sold my house. What do you

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1 mean by that?

2 A. Yes. I think you sold your River --

3 MR. BALLASES: Objection. Form.

4 A. I think you sold the River Oaks house, and  
5 then you moved.

6 Q. (BY MR. CHOUDHRI) And how do you know that?

7 MR. BALLASES: Objection. Form.

8 A. I think -- I mean, that's just -- that's the  
9 rumors.

10 Q. (BY MR. CHOUDHRI) And who told you that?

11 MR. BALLASES: Objection. Form.

12 A. I think it was in The Real Deal.

13 Q. (BY MR. CHOUDHRI) Is that where you -- are  
14 you saying that's where you know about it?

15 A. Possibly.

16 MR. BALLASES: Objection. Form.

17 A. I don't know, to be honest with you.

18 Q. (BY MR. CHOUDHRI) Do you know who Kevin  
19 Powers is?

20 MR. BALLASES: Objection. Form.

21 A. He's an attorney. Yes.

22 Q. (BY MR. CHOUDHRI) Have you communicated with  
23 Kevin Powers?

24 MR. BALLASES: Objection. Form.

25 A. I think he called me once or twice, but no

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1 real communication with him.

2 Q. (BY MR. CHOUDHRI) Have you ever texted him or  
3 received texts from him?

4 MR. BALLASES: Objection. Form.

5 A. Not that I recall. I don't think so.

6 Q. (BY MR. CHOUDHRI) Do you know who WCW is?

7 MR. BALLASES: Objection. Form.

8 A. Some entity that you owe money, I think.

9 Q. (BY MR. CHOUDHRI) Do you know who Steven Wu  
10 is?

11 A. Another guy that you --

12 MR. BALLASES: Objection. Form.

13 A. -- that you owe money to.

14 Q. (BY MR. CHOUDHRI) And your contention is I  
15 owe money to Steven Wu?

16 A. You owe money --

17 MR. BALLASES: Objection. Form.

18 A. -- to a lot of people, including me, but yes.

19 Q. (BY MR. CHOUDHRI) And what do you know about  
20 what I owe to Steven Wu?

21 MR. BALLASES: Objection. Form.

22 A. That you defrauded him, and they have --  
23 they're seeking to recover the money that you owe them  
24 and --

25 Q. (BY MR. CHOUDHRI) And how much money is

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1 that --

2 A. -- defrauded them in the Texas REIT --

3 THE REPORTER: I'm sorry --

4 Q. (BY MR. CHOUDHRI) I defrauded in the Texas  
5 REIT case, you said?

6 A. Yes. I think some Texas REIT case. I'm not  
7 sure which one, but it's millions of dollars.

8 Q. And so is it Steven Wu that you contend that I  
9 defrauded?

10 A. Yes.

11 MR. BALLASES: Objection. Form.

12 Q. (BY MR. CHOUDHRI) And Steven Wu is owed money  
13 by Texas REIT is your contention?

14 MR. BALLASES: Objection. Form.

15 A. Yes, and there's probably many other creditors  
16 out there I'm not aware of.

17 Q. (BY MR. CHOUDHRI) Which creditors are you  
18 aware of?

19 MR. BALLASES: Objection. Form.

20 A. Only the ones that I would know. I mean, I'm  
21 one of them. So, I mean, whoever's listed in these  
22 schedules, I guess.

23 Q. (BY MR. CHOUDHRI) Have you contacted TIG  
24 Romspen? Do you know who Romspen is?

25 A. No.

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1 MR. BALLASES: Objection. Form.

2 A. I know who they are, but I have not -- I read  
3 about them in The Real Deal, but I've not contacted  
4 them.

5 Q. (BY MR. CHOUDHRI) Do you know who Mansoor  
6 Chaudhry is?

7 A. Yes.

8 Q. Do you have an attorney-client privilege with  
9 him?

10 A. No, I don't.

11 MR. BALLASES: Objection. Form.

12 Q. (BY MR. CHOUDHRI) Have you ever texted him or  
13 received texts from him?

14 A. No.

15 MR. BALLASES: Objection. Form.

16 A. I mean, yes, he's texted me. Yes, he has.

17 Q. (BY MR. CHOUDHRI) So when did you meet  
18 Mansoor Chaudhry?

19 A. Maybe two years --

20 MR. BALLASES: Objection. Form.

21 Q. (BY MR. CHOUDHRI) Under what circumstance?

22 MR. BALLASES: Objection. Form.

23 A. He's a -- he has a title company, and I've  
24 done some title work with him.

25 Q. (BY MR. CHOUDHRI) So you do some title work

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1 with him?

2 A. Yes.

3 MR. BALLASES: Objection. Form.

4 Q. (BY MR. CHOUDHRI) What is the name of his  
5 title company?

6 MR. BALLASES: Objection. Form.

7 A. I think it's called Transact Title.

8 Q. (BY MR. CHOUDHRI) And is Transact Title a  
9 tenant at 1001 West Loop?

10 MR. BALLASES: Objection. Form.

11 A. Yes.

12 Q. (BY MR. CHOUDHRI) And have you filed a lis  
13 pendens against 1001 West Loop?

14 MR. BALLASES: Objection. Form.

15 A. If it's an alter ego of yours -- no, I don't  
16 think so. Maybe not.

17 Q. (BY MR. CHOUDHRI) You're looking at Osama to  
18 answer the questions. Do you understand this  
19 deposition is me asking you, not Osama answering the  
20 questions? You understand that; right?

21 MR. BALLASES: Objection. Sidebar.

22 Don't pretend like you know what's happening  
23 over here.

24 Objection. Sidebar.

25 A. I'm not looking at anybody. But I don't know.



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1 Do you want me to file a lis pendens on 1001 West  
2 Loop?

3 Q. (BY MR. CHOUDHRI) As we sit here today, are  
4 you telling me that you have not caused any lis  
5 pendens to be filed on 1001?

6 A. No. I don't know. I don't think so.

7 Q. Do you contend 1001, the property, 1001, or  
8 the entity that owns 1001, is an alter ego of Ali  
9 Choudhri or Texas REIT?

10 A. Yes. Yes, it is.

11 Q. Do you contend --

12 A. Even if it's not listed by -- even if it's not  
13 here, it is -- anything that you control or own is an  
14 alter ego, because that's how you operate.

15 Q. Okay. Do you know who BridgeCo is,  
16 Mr. Khawaja?

17 A. Yes.

18 MR. BALLASES: Objection. Form.

19 Q. (BY MR. CHOUDHRI) Have you spoken to anybody  
20 at BridgeCo?

21 A. No.

22 MR. BALLASES: Objection. Form.

23 Q. (BY MR. CHOUDHRI) But you've sued BridgeCo;  
24 correct?

25 A. Yes.

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1 MR. BALLASES: Objection. Form.

2 Q. (BY MR. CHOUDHRI) And are you aware that  
3 BridgeCo made six loans?

4 A. Yeah.

5 MR. BALLASES: Objection. Form.

6 Q. (BY MR. CHOUDHRI) Do you know which  
7 properties BridgeCo made loans on?

8 A. There were --

9 MR. BALLASES: Objection. Form.

10 A. -- some properties in Austin and some  
11 properties in Houston, but I don't know -- I couldn't  
12 tell you it's this one or that one.

13 Q. (BY MR. CHOUDHRI) And you contend those  
14 properties are alter egos of Ali Choudhri or Texas  
15 REIT.

16 MR. BALLASES: Objection. Form.

17 A. I mean, they would be. If you own them, they  
18 would be. But I don't know if we're making that claim  
19 in this case anymore.

20 Q. (BY MR. CHOUDHRI) Have you sued Cypress  
21 BridgeCo and Magnolia BridgeCo in this case?

22 A. I think we did. And I'm not sure if we still  
23 have maintained those claims. But I know they  
24 foreclosed on their interest.

25 Q. So you're aware that BridgeCo foreclosed on

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1 the properties that you filed lis pendenses on.

2 A. Yes.

3 Q. And you realize that a lis pendens frustrates  
4 and interferes with the sale of a property.

5 Please don't look at Osama for an answer. I  
6 know you really want to.

7 MR. BALLASES: Objection --

8 MR. CHOUDHRI: But, Mr. Abdullatif, would you  
9 please stop helping Mr. Khawaja?

10 MR. BALLASES: Objection. Sidebar.

11 You don't know what you're talking about.

12 (Crosstalk)

13 MR. CHOUDHRI: Madam Court Reporter, did you  
14 get -- did --

15 (Crosstalk)

16 THE REPORTER: Sorry. What is your question,  
17 Mr. Choudhri?

18 MR. CHOUDHRI: What did Osama say? I couldn't  
19 hear him.

20 THE REPORTER: I couldn't hear him either. If  
21 I can't hear him, I can't transcribe him. And he's  
22 not on the record. Like, he's not --

23 A. Let's please continue with the deposition.

24 MR. CHOUDHRI: Mr. Osama Abdullatif, I can  
25 hear you in the background calling me a liar. That's

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1 unprofessional.

2 MR. BALLASES: Objection. Sidebar.

3 Ask your question, or I'll --

4 A. Or we're gonna cut this -- or we're gonna shut  
5 this thing down.

6 Q. (BY MR. CHOUDHRI) So, Mr. Khawaja, you're  
7 aware -- let me back up.

8 You're in the real estate business as well;  
9 right?

10 MR. BALLASES: Objection. Form.

11 A. Not really. A little bit.

12 Q. (BY MR. CHOUDHRI) Do you own real estate  
13 outside of your home?

14 A. Yes.

15 Q. Which real estate?

16 MR. BALLASES: Objection. Form.

17 A. I'm not gonna get -- I'm not gonna get into  
18 that.

19 Q. (BY MR. CHOUDHRI) Are you refusing to answer  
20 the question about what real estate you own --

21 A. Yes, I'm --

22 Q. -- outside of your house?

23 A. I am -- I am refusing to answer that.

24 MR. BALLASES: I'm instructing him not to  
25 answer because it's outside the scope of the limited

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1 deposition that the judge ordered.

2 Q. (BY MR. CHOUDHRI) So, Mr. Khawaja, we've  
3 already established many, many, many times it's your  
4 contention that any entity I own or control is an  
5 alter ego of Texas REIT; correct?

6 A. Yes.

7 MR. BALLASES: Objection. Form.

8 Q. (BY MR. CHOUDHRI) And so you're also aware,  
9 Mr. Khawaja, that when you file a lis pendens on a  
10 piece of property, you have to meet certain elements  
11 to have a lis pendens on a piece of property. Are you  
12 aware of that?

13 A. Yes.

14 Q. And do you know what those elements are?

15 MR. BALLASES: Objection. Form.

16 A. I don't.

17 Q. (BY MR. CHOUDHRI) You're unaware what the  
18 elements are to file a lis pendens against real  
19 property.

20 A. I'm not sure.

21 MR. BALLASES: Objection. Form.

22 Q. (BY MR. CHOUDHRI) You're unaware, or you're  
23 aware?

24 A. I'm not aware.

25 MR. BALLASES: Objection. Form.

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1 MR. CHOUDHRI: Mr. Ballases, it doesn't change  
2 by you yelling on the objection, so --

3 MR. BALLASES: Objection. Sidebar.

4 Q. (BY MR. CHOUDHRI) Mr. Khawaja, how many  
5 lawsuits have you been involved in where you have  
6 instructed, sponsored litigation against Texas REIT or  
7 any other entity that I own or control?

8 MR. BALLASES: Objection. Form.

9 A. I don't know. I don't -- I don't think many  
10 at all. Not as many as I could. That's for sure.

11 Q. (BY MR. CHOUDHRI) And so you have filed a lis  
12 pendens against a property at 2232 Swift Boulevard.  
13 Are you aware of that?

14 A. Yes. Yes.

15 Q. And you contend 2232 Swift Boulevard -- that  
16 property and any interest in that property is an alter  
17 ego of Texas REIT?

18 A. Or Ali Choudhri.

19 MR. BALLASES: Objection. Form.

20 A. Or Ali Choudhri.

21 Q. (BY MR. CHOUDHRI) Texas REIT or Ali --

22 A. Or Jetall.

23 Q. -- Choudhri; correct?

24 A. Or Jetall.

25 Q. Sorry?

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1 A. Or Jetall Companies, Inc.

2 Q. Okay. So basically any and all entities that

3 I have any ownership in -- directly, indirectly --

4 it's an alter ego, and that's what you believe.

5 A. I believe the evidence will show that, yes.

6 MR. BALLASES: Objection. Form.

7 Q. (BY MR. CHOUDHRI) But as we sit here today,

8 you don't have any evidence --

9 A. No, we have plenty --

10 MR. BALLASES: Objection. Form.

11 A. We've been talking about it all day.

12 MR. BALLASES: Objection. Form.

13 Q. (BY MR. CHOUDHRI) So outside of whatever we  
14 talked about today, you don't have any other evidence.

15 MR. BALLASES: Objection. Form.

16 A. Not until we get into the discovery, which  
17 you're obstructing, but yes.

18 Q. (BY MR. CHOUDHRI) So this is your opportunity  
19 to tell --

20 A. You'll find out more after you and, I think,  
21 your mom's deposition coming up.

22 Q. Oh, okay. So you've sued my mom; correct?

23 A. Yes. Don't try to get out of that deposition  
24 either. I'm gonna have a court reporter, translator,  
25 everything. So don't try to get out of that.

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1 Q. Mr. Khawaja, have you -- let me pull this up.

2 Hold on.

3 Have you contacted anybody related to QB Loop

4 Property?

5 MR. BALLASES: Objection. Form.

6 A. No.

7 Q. (BY MR. CHOUDHRI) Have you contacted --

8 A. What's going on with that?

9 THE WITNESS: Sorry. Sorry.

10 A. I have not.

11 Q. (BY MR. CHOUDHRI) Have you contacted -- would

12 you dispute if third parties made statements that you

13 contacted them and told them not to do business with

14 me?

15 MR. BALLASES: Objection. Form.

16 A. I would dispute that, yeah. I mean, tell

17 them -- who said that I said that?

18 MR. BALLASES: Objection. Form.

19 Q. (BY MR. CHOUDHRI) Have you ever contacted

20 anybody who I do business with, or any of my related

21 entities, and told them not to do business with me?

22 MR. BALLASES: Objection. Form.

23 A. I mean, that's outside the scope of what we're

24 talking about, but no, unless I was specifically

25 asked.



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1 Q. (BY MR. CHOUDHRI) Have you contacted Anwar

2 Qadeer (phonetic) in relation to --

3 A. No.

4 MR. BALLASES: Objection. Form.

5 A. No. Are you trying to sue Anwar now? No.

6 Q. (BY MR. CHOUDHRI) Have you contacted Qasim --

7 Abdul Qasim (phonetic)?

8 MR. BALLASES: Objection --

9 A. Abdul Qasim?

10 Q. (BY MR. CHOUDHRI) Abdul Qasim.

11 THE REPORTER: Sorry. One at a time, please.

12 A. I never contacted -- no, he's a friend of --

13 THE REPORTER: Sorry. One at a time, please.

14 Mr. Khawaja, could you please repeat your

15 answer?

16 A. I have not.

17 MR. BALLASES: Objection. Form.

18 Please stick to the limited purpose of this

19 deposition.

20 Q. (BY MR. CHOUDHRI) And --

21 A. Don't get those guys in trouble.

22 Q. -- Mr. Khawaja, are you -- are you -- are you

23 done laughing?

24 A. Yes. Yes.

25 Q. Thank you. You understand this is a serious

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1 situation we're here, right? This is a deposition.

2 It's not a joke --

3 A. Oh, very much.

4 MR. BALLASES: Objection. Sidebar.

5 A. Very much. Very much so.

6 Q. (BY MR. CHOUDHRI) And, Mr. Khawaja, you're  
7 taking this serious; correct?

8 A. Oh, yeah, absolutely.

9 MR. BALLASES: Objection. Sidebar.

10 Q. (BY MR. CHOUDHRI) Mr. Khawaja, can you tell  
11 me why -- you know, why you believe that the BridgeCo  
12 entities are an alter ego of Texas REIT?

13 MR. BALLASES: Objection. Sidebar.

14 No, excuse me. I'm gonna go ahead, and I'm  
15 gonna actually object to this exceeding the scope of  
16 the deposition that the judge ordered and instruct him  
17 not to answer.

18 A. I'm gonna take the advice of counsel.

19 Q. (BY MR. CHOUDHRI) Mr. Khawaja, you're not  
20 going to answer the question, I understand; is that  
21 correct?

22 A. Yes.

23 Q. Mr. Khawaja, are you aware that when a lis  
24 pendens is filed on a property, a property -- the  
25 title is clouded, and it interferes with the ability

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1 for the property to be sold or refinanced?

2 A. I mean --

3 MR. BALLASES: Objection. Form.

4 A. -- you filed many of those, so you're pretty  
5 aware of what it does, so yes.

6 Q. (BY MR. CHOUDHRI) And besides whatever we've  
7 covered today, you don't have any other -- are you --

8 A. Plans?

9 Q. -- familiar with the -- sorry?

10 A. Other plans? I don't know. I'm just trying  
11 to guess what you were gonna say.

12 Q. I'm sorry, Mr. Khawaja. What was your  
13 statement?

14 A. I said -- you said, You don't have any other,  
15 and then you just trailed off. So I said, What,  
16 plans?

17 Q. What -- so I think I've asked this earlier,  
18 and you've refused to answer. I just want to make  
19 sure the record is clear. You're refusing to answer  
20 any contingency claims or any claims you own or hold,  
21 indirectly or directly, against me or any of my  
22 entities. You're refusing to answer any of those  
23 questions.

24 A. Yes --

25 MR. BALLASES: Objection --

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1 A. -- that's correct.

2 MR. BALLASES: Objection. Form.

3 Q. (BY MR. CHOUDHRI) And you're aware that  
4 2727 Kirby was foreclosed on.

5 MR. BALLASES: Objection. Form.

6 A. That's what I understand.

7 Q. (BY MR. CHOUDHRI) And you're aware that  
8 that's one of the properties you filed a lis pendens  
9 on.

10 MR. BALLASES: Objection. Form.

11 A. Sure. You owe a lot of money on it.

12 Q. (BY MR. CHOUDHRI) Is there money owed to you  
13 on 2727 Kirby?

14 A. I mean, it's an alter --

15 MR. BALLASES: Objection. Form.

16 A. -- ego of Jetall Companies, so yeah, we  
17 should've gotten something out of it.

18 Q. (BY MR. CHOUDHRI) Is that why you filed a  
19 lis pendens, so you could get something out of it?

20 MR. BALLASES: Objection. Form.

21 A. To prevent you from committing fraudulent  
22 transfers and defrauding people like you do.

23 Q. (BY MR. CHOUDHRI) And so let's elaborate.  
24 How do I defraud people?

25 MR. BALLASES: Objection. Form.

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1 A. I mean -- I mean, come on.

2 Q. (BY MR. CHOUDHRI) I just want to --

3 (Crosstalk)

4 A. You really want me to answer that question?

5 Q. (BY MR. CHOUDHRI) Absolutely. Go ahead.

6 MR. BALLASES: Objection. Sidebar.

7 It's not the opportunity to ask an improper

8 question.

9 THE WITNESS: No.

10 MR. BALLASES: It is your opportunity to ask  
11 about why a proof of claim was filed and why it was  
12 withdrawn. You are mistaken, and you're exceeding the  
13 Court's order. Please stick to the Court's limited  
14 deposition order.

15 Q. (BY MR. CHOUDHRI) Are you going to refuse to  
16 answer the question, Mr. Khawaja?

17 A. Yes.

18 MR. BALLASES: Objection. Form.

19 Q. (BY MR. CHOUDHRI) Mr. Khawaja, you're aware  
20 that following the filing of lis pendenses on various  
21 properties, those properties were foreclosed after you  
22 filed those lis pendenses, true or false?

23 MR. BALLASES: Objection. Form.

24 A. After -- I mean, what does that mean, after I  
25 filed those lis pendenses? You lost those properties

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1 because you refused to pay on them, like you've done  
2 on so many properties throughout your entire life.

3 So, you know, you excel at losing properties.  
4 That's what happened. That's what happened to  
5 2425 West Loop. Don't try to put that on me unless  
6 you want more lawsuits. We're happy to oblige.

7 Q. (BY MR. CHOUDHRI) Do you --

8 A. Yes.

9 MR. BALLASES: Objection. Sidebar.

10 A. No, I'm not done. I'm just getting started.

11 Q. (BY MR. CHOUDHRI) So continue on. I'm  
12 listening.

13 MR. BALLASES: There's no question on the  
14 table.

15 Q. (BY MR. CHOUDHRI) You're just getting  
16 started?

17 THE REPORTER: I'm sorry --

18 Q. (BY MR. CHOUDHRI) What do you mean by "just  
19 getting started" --

20 THE REPORTER: I'm sorry. Mr. Ballases, what  
21 was your objection or your comment?

22 MR. BALLASES: Objection. Form.

23 There was no question on the table.

24 Q. (BY MR. CHOUDHRI) Go ahead, Mr. Khawaja. If  
25 you want to talk, you can talk. You said you're just

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getting started --

MR. BALLASES: Objection. Sidebar.

A. Stick --

Q. (BY MR. CHOUDHRI) Do you want to --

A. Stick to the questions, please. Stick to the questions.

Q. You're answering -- you're answering the questions, so I'm allowing you to finish your answers. And you said --

MR. BALLASES: Objection. Sidebar.

Q. (BY MR. CHOUDHRI) -- you're just getting started. What do you mean by, "I'm just getting started"? That was your answer.

A. Yes. We have --

Q. (Unintelligible)

A. We have a lot of -- we have discovery to complete in this case.

Q. And so what do you mean, "I'm just getting started"? Elaborate on that --

MR. BALLASES: Objection. Form.

A. Yeah, we need -- we have to complete discovery.

Q. (BY MR. CHOUDHRI) And what evidence or information do you have that my mom is an alter ego of Texas REIT?

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1 MR. BALLASES: Objection. Form.

2 A. Have you reviewed the -- have you reviewed our  
3 evidence in this case? Have you looked at what we've  
4 been able to uncover, or no? I hope your attorneys  
5 are sharing it with you. There's a lot.

6 Q. (BY MR. CHOUDHRI) So what evidence do you  
7 have that Shahnaz Choudhri is an alter ego --

8 A. Yes.

9 Q. -- of Texas REIT?

10 A. There's money flowing through bank accounts.  
11 There's checks that she's written to entities that you  
12 control. There's personal payments going out to her  
13 from entities that you control. I mean, there's a  
14 lot. There's a lot. We're gonna get into all of  
15 that.

16 Q. And so the evidence is all within your  
17 pleadings. Is that --

18 A. Not all of it.

19 MR. BALLASES: Objection. Form.

20 A. Not all of it. There's just something --  
21 there's discovery. There's subpoenas. There's --  
22 there's things. There's a deposition coming up that  
23 you're aware of that you're gonna try to get out of.  
24 We're not gonna let you.

25 Q. (BY MR. CHOUDHRI) Have you made statements to



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1 third parties that Judge Norman is gonna do whatever

2 you ask him to do because you have him on payroll?

3 MR. BALLASES: Objection. Form.

4 And objection. Sidebar.

5 A. Man, come on. Don't do stuff like that.

6 That's gonna get you --

7 Q. (BY MR. CHOUDHRI) Have you made a

8 statement to anybody --

9 A. -- in a lot of trouble.

10 THE REPORTER: I'm sorry.

11 Q. (BY MR. CHOUDHRI) Have you made --

12 THE REPORTER: One person at a time, please.

13 A. That's -- that's gonna get you into a lot of  
14 trouble with the FBI. I wouldn't do that. That's a  
15 mistake on your part.

16 Q. (BY MR. CHOUDHRI) Have you ever made any  
17 statements like that? Have you ever made any  
18 statements --

19 A. No.

20 Q. -- like that?

21 MR. BALLASES: Objection. Form.

22 A. That's very dangerous of you to say that. I'm  
23 just warning you. It's very dangerous.

24 MR. CHOUDHRI: Mr. Ballases --

25 Q. (BY MR. CHOUDHRI) Mr. Khawaja --

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1 THE WITNESS: Make sure you get a copy of this  
2 transcript, please --

3 Q. (BY MR. CHOUDHRI) -- you've never made --

4 THE WITNESS: -- and provide that.

5 Q. (BY MR. CHOUDHRI) You --

6 THE REPORTER: Sorry -- okay.

7 A. I would stop if I were you. I would stop  
8 right now if I were you.

9 Q. (BY MR. CHOUDHRI) Mr. Khawaja, please. I'm  
10 asking the questions. Okay?

11 A. Yeah, you are.

12 Q. Have you met with Anthony Gill or Kenneth  
13 Shaitelman?

14 MR. BALLASES: Objection. Form.

15 A. I'm not gonna --

16 (Crosstalk)

17 MR. BALLASES: I'm going to instruct you not  
18 to answer. That has nothing to do with the proof of  
19 claim that was filed or the reason that we've offered  
20 to withdraw it, and therefore, I'm instructing not to  
21 answer. It exceeds the scope of the judge's order.

22 So I object to the form of the question.

23 A. I'm not answering.

24 Q. (BY MR. CHOUDHRI) Mr. Khawaja, were you  
25 present on September 6, 2023, when Chris Wyatt, your

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1 client, testified on the stand in Judge Manor's court?

2 MR. BALLASES: Objection --

3 A. No.

4 MR. BALLASES: Objection. Form.

5 A. I wasn't.

6 Q. (BY MR. CHOUDHRI) Were you present around  
7 September 2023 in front of Judge Manor regarding a  
8 case styled Naissance versus Zaheer?

9 MR. BALLASES: Objection. Form.

10 A. I don't even know if I was or not, but that's  
11 outside the scope of this purpose of this deposition,  
12 so move on.

13 Q. (BY MR. CHOUDHRI) Are you aware that Chris  
14 Wyatt, your client, testified that he has given you  
15 my -- Jetall Companies' hard drive?

16 MR. BALLASES: Objection. Form.

17 A. Not -- not in the -- within the scope of this  
18 conversation -- I mean this deposition. But if he  
19 testified to that, I'd have to look back and see.  
20 Maybe he did.

21 Q. (BY MR. CHOUDHRI) Is Chris Wyatt truthful?

22 MR. BALLASES: Objection. Form.

23 A. You hired him. What do you think?

24 Q. (BY MR. CHOUDHRI) Have you hired --

25 THE WITNESS: Look, I'm done, Michael. This

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1 is it. This is getting into things --

2 MR. BALLASES: Okay.

3 THE WITNESS: -- that are unrelated. So we

4 can --

5 MR. BALLASES: And you've got to go see your

6 family --

7 THE WITNESS: I have to go see my family --

8 MR. BALLASES: Then we'll take it up with a

9 judge.

10 THE WITNESS: Thank you.

11 (Crosstalk)

12 Q. (BY MR. CHOUDHRI) Are you going to walk out

13 of this deposition?

14 THE REPORTER: I'm sorry --

15 A. Yes.

16 Q. (BY MR. CHOUDHRI) No --

17 THE REPORTER: Sorry. One at a -- sorry. One

18 at a time, please. Thank you.

19 MR. CHOUDHRI: I am not done with my --

20 THE WITNESS: I have a medical --

21 MR. CHOUDHRI: -- questions.

22 THE WITNESS: -- emergency.

23 Q. (BY MR. CHOUDHRI) If you have a medical

24 emergency, we can agree to a rescheduling. Your

25 medical emergency, Mr. Khawaja, is you have a family

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1 member in the hospital; correct?

2 A. Yes, I do.

3 MR. BALLASES: You don't need to answer any  
4 more questions.

5 He has to get out of here. You took up enough  
6 time --

7 THE WITNESS: We'll take it up with a judge.

8 Q. (BY MR. CHOUDHRI) Mr. Khawaja --

9 MR. BALLASES: Do you want a five-minute  
10 break, or do you want to start?

11 Q. (BY MR. CHOUDHRI) Mr. Khawaja --

12 MR. BALLASES: You go. I got it.

13 Q. (BY MR. CHOUDHRI) -- the deposition is still  
14 going. Are you going to get up and walk out?

15 MR. CHOUDHRI: Madam Court Reporter --

16 MR. BALLASES: Yes, he's got to --

17 MR. CHOUDHRI: -- would you --

18 MS. HOOD: Okay. If I can weigh in here, I  
19 had some follow-up questions for him; very few, but I  
20 do have follow-up questions.

21 MR. BALLASES: How much time? Like, how much  
22 would you estimate, Ms. Hood?

23 MS. HOOD: Ten minutes.

24 MR. BALLASES: It's up to you. If you've got  
25 to get out of here --

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1 MR. CHOUDHRI: But I'm not done --

2 MS. HOOD: But it's -- I need -- Mr. Choudhri  
3 hasn't passed the witness. But I did want to go on  
4 the record that I do have a few more questions for  
5 him.

6 MR. BALLASES: Okay. Well --

7 THE WITNESS: We'll take it up if we need to  
8 with a judge.

9 MR. BALLASES: Okay. Then unless we're going  
10 to go directly to your ten minutes, then he's got to  
11 get to the hospital.

12 MR. CHOUDHRI: Mr. Ballases, if he's got to go  
13 to the hospital, is there a mutually agreeable time  
14 before he leaves that we can agree to maybe --

15 MR. BALLASES: No.

16 MR. CHOUDHRI: -- pick this up?

17 MR. BALLASES: No.

18 MR. CHOUDHRI: Are you not agreeing to resume  
19 the deposition at a convenient time after his  
20 emergency for his visitor -- for his family member in  
21 the hospital?

22 MR. BALLASES: I'm not right now. You've had  
23 plenty of time to ask questions. You've asked  
24 questions that had nothing to do with the limited  
25 scope of the deposition. I let you ask them. I

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1 probably shouldn't have. And so you used your time as  
2 you saw fit.

3 Do you all want to take a two-minute break or  
4 five-minute break before we start the next one, or no?

5 MR. CHOUDHRI: Mr. Ballases, I am -- this is  
6 still my deposition that I'm asking questions on. I  
7 want the record to be clear. Have you instructed your  
8 witness to leave? Have you instructed the witness to  
9 leave --

10 MR. BALLASES: He's gone. Yes, he is gone.  
11 He is gone. I've instructed him to leave because he  
12 has a family member who is dying. I don't know how  
13 much clearer I can make that. Stop repeating  
14 yourself.

15 MR. CHOUDHRI: Well, Mr. Ballases --

16 MR. BALLASES: So you can either --

17 MR. CHOUDHRI: -- as you know -- can I finish  
18 talking, please, before you keep --

19 MR. BALLASES: No --

20 MR. CHOUDHRI: -- cutting me off?

21 MR. BALLASES: -- you can't. You waste  
22 everybody's time.

23 So we can start with the next deposition.

24 It's clear that --

25 MR. CHOUDHRI: Mr. Ballases --

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1 MR. BALLASES: -- he's left, and it's clear  
2 you want to ask questions.

3 So we can start with the next deposition now  
4 or in two minutes. Please make your decision.

5 Stephen, if you want to make it because you're  
6 the lead, that's fine.

7 MS. HOOD: Can I just say on the record that I  
8 would like to finish my questioning of the deponent  
9 when he has the next available opportunity that's  
10 convenient for everybody so I can ask my four  
11 questions.

12 MR. BALLASES: And I would -- that's fine.  
13 You can take it up with the Court. He was on record  
14 for five hours. Take away maybe the 30 minutes where  
15 we argued about the judge's oral order. Four and a  
16 half hours, that's plenty of time for this deposition  
17 to go forward and for y'all to complete it.

18 We have two more people here, and I have till  
19 4:30. I'd like to get started to go as fast as  
20 possible, but it's y'all's call.

21 MS. HOOD: Okay. Well, I'll just --

22 MR. CHOUDHRI: Mr. Ballases, the time is --  
23 the time is 3:30 p.m. Is that --

24 Or, Court Reporter, would you just confirm  
25 what time we have right now?



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1 MR. BALLASES: No one needs to confirm the  
2 time. Do you want to get started with the next one or  
3 not? I mean, stop wasting everybody's time?

4 MS. HOOD: I just want to -- for my part of  
5 this, I wasn't -- I didn't adjourn the deposition with  
6 regard to this deponent for my questioning. I was  
7 waiting for it to come back, to cycle around with me  
8 again. I have a few more questions for him, and I  
9 want to finish those.

10 And I understand he's left, and I understand  
11 the basis for it, and I wish all Godspeed to his  
12 family member. And I don't want to get involved in  
13 any sort of issue about whether someone needs to  
14 leave, doesn't need to leave, that sort of thing,  
15 right? I just -- and if we have to go back to the  
16 judge for my four questions, I'm happy to do it.

17 I just want that on the record for me. What  
18 the other lawyer does and what Mr. Choudhri does --

19 MR. BALLASES: (Unintelligible)

20 MS. HOOD: -- I'm not in control of that.

21 MR. BALLASES: I understand. You've made  
22 it -- you've put it on the record twice. That's fine.  
23 I understand, and I'll stipulate that you do have more  
24 questions.

25 Do we want to go to the next witness now?

OMAR KHAWAJA  
TEXAS REIT LLC

September 11, 2024  
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1 MR. CHOUDHRI: Mr. Ballases, would you at  
2 least provide, subject to your client's availability,  
3 times you're available to resume the deposition of  
4 Omar Khawaja?

5 MR. BALLASES: No. No, I will not. I've said  
6 that twice now.

7 MR. CHOUDHRI: Are you not --

8 MR. BALLASES: Do we want to move to the next  
9 deposition?

10 MR. CHOUDHRI: Are you going to refuse to make  
11 him available --

12 MR. BALLASES: Stop wasting time. I'm not  
13 going to provide it unless we have an order from a  
14 judge. Do you understand? Stop wasting time. We've  
15 got a limited amount --

16 MR. CHOUDHRI: Well, I just want to --

17 MR. BALLASES: -- of time --

18 MR. CHOUDHRI: -- get this on the --  
19 (Crosstalk)

20 MR. BALLASES: -- basis to take a deposition.

21 Do we want to move to the next person or not?

22 Please tell me.

23 MR. CHOUDHRI: Before --

24 MR. BALLASES: I would say, Stephen, it's your  
25 job to say it.

OMAR KHAWAJA  
TEXAS REIT LLC

September 11, 2024  
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1 MR. SATHER: Yeah, I'm prepared --  
2 MR. CHOUDHRI: Mr. --  
3 MR. SATHER: -- to move to the next --  
4 MR. CHOUDHRI: Mr. Ballases --  
5 MR. SATHER: -- witness --  
6 MR. BALLASES: All right. Let's go.  
7 MR. SATHER: Who do you have --  
8 MR. CHOUDHRI: Mr. Ballases --  
9 MR. SATHER: -- up next?  
10 THE REPORTER: I'm sorry --  
11 MR. BALLASES: Osama.  
12 THE REPORTER: Okay.  
13 MR. CHOUDHRI: Mr. Ballases --  
14 MR. BALLASES: Osama's ready to go.  
15 MR. CHOUDHRI: Time out. I just want to get  
16 this on the record very clearly, Mr. Ballases.  
17 MR. BALLASES: Oh, Jesus.  
18 MR. CHOUDHRI: I just want to make it --  
19 MR. BALLASES: It's on the record clearly.  
20 Stop wasting time.  
21 MR. CHOUDHRI: You are not willing to  
22 cooperate to resume the deposition of Omar Khawaja  
23 absent a court order. Is that your position?  
24 MR. BALLASES: I've stated my position. Let's  
25 move forward.

OMAR KHAWAJA  
TEXAS REIT LLC

September 11, 2024  
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1 Let's take a two-minute break, and then  
2 Osama's going to be in this chair.  
3 THE REPORTER: Okay. So I am going off the  
4 record.  
5 (End of proceedings at 3:31 p.m.)  
6  
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## EXHIBIT 6

**THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

In re:

GALLERIA 2425 OWNER, LLC,

Debtor.

## Chapter 11

Case No. 23-34815

## ORDER GRANTNG MOTION TO COMPLY WITH THE GATEKEEPING PROVISIONS OF THE CONFIRMED CHAPTER 11 PLAN

BEFORE THE COURT is the Motion to Comply with the Gatekeeping Provisions of the Confirmed Chapter 11 Plan.

The Court hereby GRANTS the motion.

IT IS THEREFORE HEREBY ORDERED that the claims raised by Ali Choudhri and Naissance Galleria, LLC against the Bank can proceed in the following cases:

*Naissance Galleria, LLC v. Zaheer, et al.*, Cause No. 2023-43755, pending in the 80th District Court of Harris County, Texas;

*Galleria 2425, LLC, Naissance Galleria, LLC and Choudhri v. NBK*, Adversary Case No. 23-06009, pending in this Court; and

*Choudhri v. NBK and Zaheer*, Adversary Case No. 23-03263,  
pending in this Court.

Dated:

UNITED STATES BANKRUPTCY COURT

## EXHIBIT 7

**IN RE GALLERIA 2425 OWNER, LLC, CASE NO. 23-34815**  
**SERVICE LIST (a/o July 2, 2024)**

**Debtor:**

Galleria 2425 Owner, LLC  
1001 West Loop South Ste 700  
Houston, TX 77027

**Debtor's Counsel:**

Reese W. Baker  
Baker & Associates  
950 Echo Lane Ste 300  
Houston, TX 77024

James Q. Pope  
The Pope Law Firm  
616 Savoy Drive Ste 1125  
Houston, TX 77036

**U.S. Trustee:**

Office of United States Trustee  
Attn: Jana Smith Whitworth  
515 Rusk Street Suite 3516  
Houston, TX 77002

**Chapter 11 Trustee:**

Christopher R. Murray  
602 Sawyer Street Ste 400  
Houston, TX 77007

**Chapter 11 Trustee's Counsel:**

R. J. Shannon  
Shannon & Lee LLP  
2100 Travis Street Ste 1525  
Houston, TX 77002

**Governmental Entities:**

Harris County Tax Assessor  
P O Box 4622  
Houston, TX 77210

Harris County, et al.  
P O Box 2928  
Houston, TX 77252-2928

**Twenty Largest Creditors:**

Caz Creek Lending  
118 Vintage Park Blvd No. W  
Houston, TX 77070

Cirro Electric  
P O Box 60004  
Dallas, TX 75266

City of Houston  
P O Box 1560  
Houston, TX 77251-1560

City of Houston Water Department  
P O Box 1560  
Houston, TX 77251-1560

Datawatch Systems  
Suite 200  
4520 East West Highway  
Bethesda, MD 20814

Firetron  
10101A Stafford Centre Dr.  
Stafford, TX 77477

First Insurance Funding  
450 Skokie Blvd  
Northbrook, IL 60062

Gulfstream Legal Group  
1300 Texas Street  
Houston, TX 77002

*(Returned to Sender / Unable to Forward)*

Gulfstream Legal Group  
720 N Post Oak Rd Ste 355  
Houston, TX 77024

Hayward PLLC  
10501 N Central Expy Ste 106  
Dallas, TX 75231-2203



HNB Construction, LLC  
521 Woodhaven  
Ingleside, TX 78362

Houston Community College System  
c/o Tara Grundemeier  
Linebarger, Grogan, Blair & Sampson  
P O Box 3064  
Houston, TX 77253-3064

Houston Independent School District  
P O Box 4668  
Houston, TX 77210  
(Returned to Sender / Unable to Forward)

Lexitas  
P O Box 734298 Dept 2012  
Dallas, TX 75373

Nationwide Security  
2425 W Loop South Ste 300  
Houston, TX 77027  
(Returned to Sender / Unable to Forward)

Nichamoff Law Firm  
2444 Times Blvd Ste 270  
Houston, TX 77005

T&R Mechanical  
21710 White Oak Drive  
Conroe, TX 77306-8848  
(Returned to Sender / Unable to Forward)

TKE  
3100 Interstate North Cir SE 500  
Atlanta, GA 30339

Zindler Cleaning Service Co.  
2450 Fondren Ste 113  
Houston, TX 77063

**Other Creditors / Interest Holders:**

2425 WL, LLC  
60 West 2nd Street  
Freeport, NY 11746

ADT  
P O Box 382109  
Pittsburgh, PA 15251

Ali Choudhri  
1001 West Loop South 700  
Houston, TX 77027

Ash Automated Control Systems, LLC  
P O Box 1113  
Fulshear, TX 77441

CFI Mechanical, Inc.  
6109 Brittmoore Rd  
Houston, TX 77041

CNA Insurance Company  
P O Box 74007619  
Chicago, IL 60674

Comcast  
P O Box 60533  
City of Industry, CA 91716

Environmental Coalition Inc.  
P O Box 1568  
Stafford, TX 77497

Ferguson Facilities Supplies  
P O Box 200184  
San Antonio, TX 78220

Jetall Companies Inc.  
2425 West Loop South Ste 1100  
Houston, TX 77027-4210

Kings 111 Emergency Communications  
751 Canyon Drive Suite 100  
Coppell, TX 75019

Logix Fiber Networks  
P O Box 734120  
Dallas, TX 75373

Mueller Water Treatment  
1500 Sherwood Forest Dr  
Houston, TX 77043

Smart Office Solutions  
6623 Theall Road  
Houston, TX 77066-1213  
(Returned to Sender / Unable to Forward)

Waste Management  
P O Box 660345  
Dallas, TX 75266

Metwall Design Solutions LLC  
10931 Day Road  
Houston, TX 77043-4901

US Retailers LLC d/b/a Cirro Energy  
Attn: Bankruptcy Department  
P O Box 3606  
Houston, TX 77253-3606

Naissance Galleria, LLC  
c/o Law Office of Nima Taherian  
701 N Post Oak Rd Ste 216  
Houston, TX 77024

H.N.B. Construction, LLC  
c/o Malcolm D. Dishongh  
P O Box 2347  
Humble, TX 77347-2347

CC2 TX, LLC  
14800 Landmark Blvd Ste 400  
Dallas, TX 75254

MacGeorge Law Firm  
2921 E 17th St Bldg D Ste 6  
Austin, TX 78702  
(Returned to Sender / Unable to Forward)

MacGeorge Law Firm  
701 Tillery Street Ste 12  
Austin, TX 78702

**Executory Contract Counterparties:**

2425 West Loop LLC dba Metwall Design  
Solutions LLC  
2425 West Loop South Ste 800  
Houston, TX 77027-4214  
(Returned to Sender / Unable to Forward)

2425 WL, LLC  
13498 Pond Springs Rd  
Austin, TX 78729-442  
(Returned to Sender / Unable to Forward)

2425 WL, LLC  
700 Lavaca Street Ste 1401  
Austin, TX 78701  
(Returned to Sender / Unable to Forward)

Bankable Equities  
2425 West Loop South Ste 600  
Houston, TX 77027-4203

Boho Lounge  
2425 West Loop South Ste 100  
Houston, TX 77027-4205  
(Returned to Sender / Unable to Forward)

CNA Insurance Company  
P O Box 74007619  
Chicago, IL 60674

Eyebrows 4UTX LLC  
2425 West Loop South Ste 340b  
Houston, TX 77027-4205

First Insurance Funding  
450 Skokie Blvd  
Northbrook, IL 60062

G3 Global Services LLC  
2425 West Loop South Ste 310  
Houston, TX 77027-4208

Galloworks  
2425 West Loop South Ste 400  
Houston, TX 77027-4205

Jetall Companies Inc.  
2425 West Loop South Ste 1100  
Houston, TX 77027-4210

Kudrath Enterprises PLLC  
2425 West Loop South Ste 350  
Houston, TX 77027-4208

Nationwide Investigations & Security Inc.  
2425 West Loop South Ste 300  
Houston, TX 77027-4207  
*(Returned to Sender / Unable to Forward)*

Shah Sloan LLC  
2425 West Loop South Ste 501, 503 and 523  
Houston, TX 77027-4205  
*(Returned to Sender / Unable to Forward)*

SIBS International Inc.  
2425 West Loop South Ste 900  
Houston, TX 77027-4205  
*(Returned to Sender / Unable to Forward)*

SIBS International Inc.  
2425 West Loop South Ste 350  
Houston, TX 77027  
*(Returned to Sender / Unable to Forward)*

SprintCom Inc.  
2425 West Loop South, Rooftop  
Houston, TX 77027-4205  
*(Returned to Sender / Unable to Forward)*

St. Christopher Holdings GP LLC  
2425 West Loop South Ste 700  
Houston, TX 77027-4205

UL Therapy  
2425 West Loop South Ste 315  
Houston, TX 77027-4211  
*(Returned to Sender / Unable to Forward)*

Uptown Cosmetic and Implant Dentistry  
2425 West Loop South Ste 333  
Houston, TX 77027-4211

**Parties Requesting Notice:**

Jeannie Lee Andressen  
Tara Grundemeier  
Linebarger Goggan Blair & Sampson LLP  
P O Box 3064  
Houston, TX 77253-3064  
*Counsel for City of Houston, Houston  
Community College System, and Houston  
ISD*

Rodney Lee Drinnon  
McCathern Houston  
2000 West Loop South Ste 1850  
Houston, TX 77027  
*Counsel for Rodney Drinnon*

Susan Fuertes  
Harris County Attorney's Office  
P O Box 2928  
Houston, TX 77252-2928  
*Counsel for Harris County, Attn: Property  
Tax Division*

James Robert MacNaughton  
Porter & Powers PLLC  
5900 Memorial Drive Ste 305  
Houston, TX 77027  
*Counsel for 2425 West Loop, LLC  
(Returned to Sender / Unable to Forward)*

James Robert MacNaughton  
Porter & Powers PLLC  
1776 Yorktown St Ste 300  
Houston, TX 77056  
*Counsel for 2425 West Loop, LLC  
(Returned to Sender / Unable to Forward)*

James Robert MacNaughton  
Porter Firm, PLLC  
2221 S. Voss Road, Suite 200  
Houston, TX 77057  
*Counsel for 2425 West Loop, LLC*

Stephen Wayne Sather  
Mark E. Smith  
Barron Newburger, P.C.  
7320 N Mopac Expy Ste 400  
Austin, TX 78731  
*Counsel for 2425 WL, LLC*

Howard Marc Spector  
Spector & Cox, PLLC  
12770 Coit Road Ste 850  
Dallas, TX 75251  
*Counsel for CC2 TX, LLC*

Broocks Wilson  
Kean Miller LLP  
711 Louisiana Suite 1800  
Houston, TX 77002  
*Counsel for Sonder USA Inc.*

Ali Choudhri  
2425 West Loop South 11th Floor  
Houston, TX 77027

David Tang  
6711 Stella Link #343  
West University Place, TX 77005  
*Counsel for Azeemeh Zaheer*

Omar Khawaja  
5177 Richmond Ave Ste 1065  
Houston, TX 77056  
*Counsel for Azeemeh Zaheer*

**ENTERED**

November 05, 2024

Nathan Ochsner, Clerk

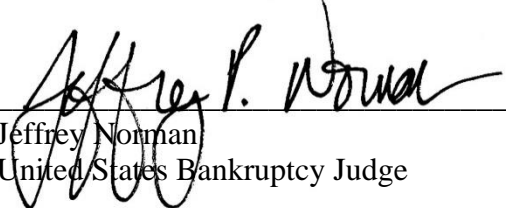
**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION****IN RE:****GALLERIA 2425 OWNER, LLC,****Debtor.**§  
§  
§  
§  
§  
§**CASE NO: 23-34815****CHAPTER 11****ORDER RESETTING HEARING**

Hearing is reset on the Motion to Comply with the Gatekeeping Provisions of the Confirmed Chapter 11 Plan (ECF No. 810) at 9:00 a.m. on December 3, 2024, in Courtroom 403, United States Courthouse, 515 Rusk St., Houston, Texas. The response deadline is 5:00 p.m. on November 22, 2024. Requested relief that is unopposed by written response prior to the response deadline may be ruled on without the necessity of a hearing. The Court may grant or deny any relief sought in any motion/application or objection without hearing based on responsive pleadings. The movant shall serve a copy of this order on all affected parties within 24 hours and file a certificate of service; **or** file and serve a hearing notice within 24 hours, which must include the response deadline.

**Parties should reference the Court's website for in person hearing requirements and connection instructions for virtual appearances.<sup>1</sup>**

**SO ORDERED.**

SIGNED 11/05/2024



\_\_\_\_\_  
Jeffrey Norman  
United States Bankruptcy Judge

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<sup>1</sup> <https://www.txs.uscourts.gov/page/united-states-bankruptcy-judge-jeffrey-p-norman>

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

In re:	§	
	§	Case No. 23-34815 (JPN)
GALLERIA 2425 OWNER, LLC	§	
	§	Chapter 11
Debtor.	§	

**NBK’S RESPONSE TO ALI CHOUDHRI’S MOTION TO COMPLY WITH THE  
GATEKEEPING PROVISIONS OF THE CONFIRMED CHAPTER 11 PLAN**  
[Relates to Docket No. 810]

TO THE HONORABLE JEFFREY P. NORMAN,  
UNITED STATES BANKRUPTCY JUDGE:

National Bank of Kuwait, S.A.K.P., New York Branch (“NBK”), files this response (the “Response”) to Ali Choudhri’s *Motion to Comply with the Gatekeeping Provisions of the Confirmed Chapter 11 Plan* [Docket No. 810] (“Choudhri’s Motion”)<sup>1</sup> and represents follows:

**PRELIMINARY STATEMENT**

1. The Court has provided Mr. Choudhri with every opportunity to participate in this case and be heard. When attorneys for companies he owns were unwilling to make arguments to the Court or pursue various lines of questioning with witnesses, the Court permitted Mr. Choudhri to examine witnesses and make arguments, which were ultimately found to be nonsense.<sup>2</sup>

2. Now, after three plus years of litigation involving two bankruptcy cases and several state court lawsuits and bankruptcy adversary proceedings that have not gone his way, Mr. Choudhri, rather than simply comply with the unstayed provisions of the confirmed Plan,

---

<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in National Bank of Kuwait, S.A.K.P, New York Branch’s Emergency Motion to Enforce the Gate-Keeping Provisions of the Confirmed Chapter 11 Plan [Docket No. 758] (“NBK’s Motion”).

<sup>2</sup> “This Court having spent considerable time attempting to evaluate the actions and testimony of Ali Choudhri in this case both as a witness and as a pro se litigant. The Court, based on this analysis, holds that Choudhri must at times believe what he is telling the Court. Unfortunately, what he has told the Court, often in broad terms, is not supported by rational facts or any documentary evidence. It additionally often is totally untrue.” [Docket No. 565 at 17-18] (the “Memorandum Opinion”).

seeks to challenge its gatekeeping provisions, so that he can continue to harass NBK, arguing that the Supreme Court “significantly constrained” this Court’s gatekeeping powers. That argument fails for two reasons. First, *Purdue Pharma* did nothing to alter existing Fifth Circuit law,<sup>3</sup> so nothing in *Purdue Pharma* requires this Court to reconsider the propriety of the Plan’s gatekeeping provisions.

3. Second, Mr. Choudhri is barred from challenging the Plan’s gatekeeping provisions. Although a company owned by Mr. Choudhri challenged and appealed the Plan’s gatekeeping provisions, Mr. Choudhri did not.<sup>4</sup> As explained below, fourteen years ago the Supreme Court foreclosed an after-the-fact attack on a confirmed plan by a party that never objected or appealed, even if the challenged provisions contravene the Bankruptcy Code. *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 130 S.Ct. 1367, 176 L.Ed.2d 158 (2010).<sup>5</sup>

4. Because there is neither a basis to challenge the Plan’s gatekeeping provisions nor can Mr. Choudhri pursue a challenge given his failure to object to those provisions in the first place, the next step for the Court would be to determine whether Mr. Choudhri has colorable claims against NBK. But, as Mr. Choudhri himself acknowledges,<sup>6</sup> the Court has already made that determination. Nevertheless, Mr. Choudhri asks the Court to *reconsider* because “the Plaintiffs were not permitted to present, and the Court was not permitted to hear, a full airing of the evidence

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<sup>3</sup> Non-consensual third-party releases have long been prohibited in the Fifth Circuit. *See, e.g., Feld v. Zale Corp. (In re Zale Corp.)*, 62 F.3d 746, 760 (5th Cir. 1995) (overturing an injunction that effectively discharged a non-debtor).

<sup>4</sup> The only party to appeal the Confirmation Order was 2425 WL, LLC (“2425 WL”) [Docket No. 603].

<sup>5</sup> Any effort by Mr. Choudhri to even suggest that 2425 WL’s appeal should be treated like he appealed, or he should get some benefit here from that appeal should be rejected out of hand. Mr. Choudhri is currently opposing efforts to hold him and various of his entities *alter egos* of each other in other litigation pending before this Court, arguing each are distinct. *See John Quinlan, et al. v. Jetall Companies, Inc., et al.*, Adversary No. 23-03141 (Bankr. S.D. Tex.). He cannot have it both ways.

<sup>6</sup> *See* Choudhri’s Motion at ¶ 33.

to support the Plaintiffs' claims,"<sup>7</sup> as though the Court must conduct a full trial before it can determine whether a claim is colorable.

5. Then, instead of describing the unheard evidence and explaining how it would affect the Court's ruling, Mr. Choudhri points to (a) testimony the Court already heard and did not believe, and (b) the pleadings in the Pending Actions, without identifying a single factual allegation that the Court has not heard or that would (or even might) persuade the Court to reverse its determination that Mr. Choudhri's claims are "dubious," "of limited value," "primarily nuisance litigation," "not viable," and "implausible."<sup>8</sup> That is because there are none.

6. Additionally, Mr. Choudhri invokes the wrong legal standard for determining whether his claims against NBK are colorable and asks the Court to accept his allegations as true.<sup>9</sup> This matter does not concern the fraudulent joinder rule, and the appropriate test is not "more lenient" than the analysis applicable to a FED. R. CIV. P. 12(b)(6) motion. As explained below, the Gatekeeper Colorability Test from *Highland Capital* is broader and requires an additional level of review. The test permits a court to take into consideration its knowledge of the bankruptcy case and the parties and any additional evidence and places the burden on Mr. Choudhri to make a *prima facie* showing that his proposed claims are (a) not without foundation, (b) not without merit, and (c) not being pursued for any improper purpose such as harassment.

7. The Court ordered Mr. Choudhri to show why the claims asserted in the Pending Actions are colorable.<sup>10</sup> He has failed to do so. It is time for Mr. Choudhri's vexatious litigation against NBK to end, and he should be sanctioned.

---

<sup>7</sup> *Id.*

<sup>8</sup> Memorandum Opinion at 16-17.

<sup>9</sup> See Choudhri's Motion ¶ 24.

<sup>10</sup> See Docket No. 779 at 2. The Court also ordered Naissance Galleria to show cause, but it has not. Accordingly, pursuant to the Court's prior order, its claims against NBK must be dismissed. *Id.*



### **BACKGROUND**

8. This Court previously entered a Memorandum Opinion in which the Court determined that claims asserted by the Debtor and its principal Mr. Choudhri against NBK “are not viable” based on evidence presented during the confirmation hearing, “especially the documentary evidence.”<sup>11</sup> The Court found the disputes raised by the Debtor, primarily through Mr. Choudhri, to be “dubious and of limited value that includes primarily nuisance litigation to avoid foreclosure of the subject real estate.”<sup>12</sup> The Court also noted “two distinct facts (1) that the Debtor via his principal has never been able to pay the original note, or his Confidential Settlement Payment or his extended Confidential Settlement Payment which was a sizable discount on the original amount of the Note; [and] (2) the record in this case does not support his sizable but *implausible claims*.”<sup>13</sup> In rendering its opinion, the Court stated “Choudhri must at times believe what he is telling the Court. Unfortunately, what he has told the Court, often in broad terms, is not supported by rational facts or any documentary evidence. It additionally often is totally untrue.”<sup>14</sup>

9. During the confirmation hearing, the chapter 11 trustee testified that in the course of his duties he investigated the Debtor’s claims against NBK.<sup>15</sup> He testified that (a) the releases in favor of NBK in the Confidential Settlement Agreement (“CSA”) were likely enforceable;<sup>16</sup> (b) the Debtor and Mr. Choudhri failed to provide any documentary evidence to support its claims

---

<sup>11</sup> Memorandum Opinion at 16.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 17 (emphasis added).

<sup>14</sup> *Id.* at 17-18.

<sup>15</sup> See June 19, 2024 confirmation hearing transcript, attached as **Exhibit A**, at 122:4-9.

<sup>16</sup> See *id.* at 127:9-15.

for events following the execution of the CSA;<sup>17</sup> and (c) any factual support for those claims was “weak to non-existent.”<sup>18</sup>

10. The claims evaluated by the Trustee and the Court during the confirmation hearing included a litany of claims and alleged facts duplicated in multiple lawsuits by Mr. Choudhri, whether in his own name or via various of his entities including the Debtor, Naissance Galleria, LLC (“Naissance”), or 2425 WL.<sup>19</sup> For ease of reference, attached as **Exhibit B**, is a chart of the pending claims asserted by the Debtor, Naissance, and Mr. Choudhri.

11. Specifically, the Court noted in its Memorandum Opinion that the claims asserted by the Debtor, Naissance, and Mr. Choudhri against NBK in Adversary No. 23-03263 (“Choudhri Intervention Action”),<sup>20</sup> commenced under this bankruptcy case, are the same as those asserted in Adversary No. 23-06009 (“Galleria I Adversary”), commenced under the Debtor’s prior bankruptcy case – namely “breach of the [CSA], tortious interference with contract, tortious interference with business relations, fraud and fraudulent inducement/lender liability, fraudulent conveyance, estoppel, breach of good faith and fair dealing, and unjust enrichment.”<sup>21</sup> The claims in the *Choudhri Intervention Action* also include causes of action for conspiracy and federal misrepresentation of services and unfair competition under the Lanham Act.<sup>22</sup> The *Choudhri*

---

<sup>17</sup> See *id.* at 129:22-130:8.

<sup>18</sup> See *id.* at 130:9-13.

<sup>19</sup> See Memorandum Opinion at 2. These claims included a number of causes of action previously nonsuited with prejudice by Debtor as to NBK in Cause No. 2021-63370, *Galleria 2425 Owner, LLC v. NBK, et al.* pending in the District Court of Harris County, Texas, 281st Judicial District, including claims for breach of the loan agreement in allegedly failing to approve leases or sale of the property, common law fraud in allegedly fraudulently inducing Debtor to enter the loan agreements, tortious interference with prospective relations and existing contracts including tenant leases, breach of fiduciary duty, and general good faith duty in allegedly failing to approve tenant leases. *Plaintiffs’ Second Amended Petition* attached as **Exhibit C**; *Order on Plaintiffs’ Notice of Nonsuit as to Defendant National Bank of Kuwait, S.A.K.P.* attached as **Exhibit D**.

<sup>20</sup> The Court referenced Adversary No. 23-34815 in its Memorandum Opinion. However, the removed case is Adversary No. 23-03263.

<sup>21</sup> See Memorandum Opinion at 2-3.

<sup>22</sup> See *id.* at 3.

*Intervention Action* includes his *Second Amended Petition in Intervention* in which Choudhri asserts claims for fraud, promissory estoppel, and equitable estoppel.<sup>23</sup> Although Mr. Choudhri offers scant facts to support his claims in his *Second Amended Petition*, they appear to arise from the CSA to the extent asserted against NBK. The Court dismissed with prejudice the Debtor's causes of action against NBK in the *Choudhri Intervention Action*.<sup>24</sup>

12. Naissance also filed Cause No. 2023-43755, *Naissance Galleria, LLC v. Azeemeh Zaheer*, Cause No. 2023-43755, in the 80th Judicial District Court of Harris County, Texas, ("*Naissance I*") and in that action filed *Plaintiff's Second Amended Petition & Emergency Application for Temporary Restraining Order against NBK*.<sup>25</sup> Naissance asserts the same claims against NBK as those asserted in the *Choudhri Intervention Action* including breach of the CSA, tortious interference with contract, tortious interference with business relations, fraud and fraudulent inducement, business disparagement, and unjust enrichment. In support of the petition in *Naissance I*, Mr. Choudhri declared under penalty of perjury that the facts and events set forth in *Plaintiff's Second Amended Petition & Emergency Application for Temporary Restraining Order* against NBK were within his personal knowledge and true and correct.<sup>26</sup> As noted in footnote 10, although it was ordered to show cause why its claims can be pursued consistent with the Plan's gatekeeping provisions, Naissance did not do so. Its claim against NBK, therefore, must be dismissed. *See* Docket No. 779 at 2 ("The failure to timely file a Show Cause Motion by a plaintiff shall be deemed to be an admission by that plaintiff that its Pending Action is an estate

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<sup>23</sup> Adversary No. 23-03263, Docket No. 1-2 at 907.

<sup>24</sup> Adversary No. 23-03263, Docket No. 26.

<sup>25</sup> Attached as **Exhibit E**.

<sup>26</sup> *Id.* at 29.

claim, or is not a colorable, non-estate claim, and the appropriate Pending Action shall be permanently stayed, removed if necessary to this Court, and dismissed with prejudice.”).

### **ARGUMENT & AUTHORITIES**

#### **A. Mr. Choudhri Is Prohibited from Collaterally Attacking Confirmed Plan Provisions That He Did Not Object to or Appeal**

13. “The Supreme Court has held that a confirmed plan may bind parties in interest even if a plan provision contravenes the Bankruptcy Code.” *In re Sanchez Energy Corp.*, 631 B.R. 847, 857 (Bankr. S.D. Tex. 2021).

*In United Student Aid Funds, Inc. v. Espinosa*, a bankruptcy court confirmed a chapter 13 plan which improperly discharged a portion of the debtor’s student loan debt. 559 U.S. 260, 130 S.Ct. 1367, 176 L.Ed.2d 158 (2010). Like Occidental, the creditor received notice of the plan, but did not object to or appeal confirmation. Although the bankruptcy court confirmed the plan in error, the Supreme Court found that the confirmation order was “enforceable and binding on [the creditor] because [the creditor] had notice of the error and failed to object or timely appeal.” *Id.* at 275, 130 S.Ct. 1367.

...

“An Order confirming a plan of reorganization is entitled to res judicata effect.” *In re Wildwood Prop. Owners Ass’n*, 2017 WL 3189874, at \*7 (Bankr. S.D. Tex. July 25, 2017) (citing *Stoll v. Gottlieb*, 305 U.S. 165, 170-71, 59 S.Ct. 134, 83 L.Ed. 104 (1938)). “Federal courts have consistently applied res judicata principles to bar a party from asserting a legal position after failing, without reason, to object to the relevant proposed plan of reorganization or to appeal the confirmation order.” *Id.*

*Id.* 857-59.

14. “*Espinosa* makes clear that parties and the Court must adhere to the terms of a confirmed plan. This is so even if the Court committed a legal error by confirming the plan.” *In re Sanchez*, 631 B.R. at 857. Even if the scope of the gatekeeping provisions in the confirmed Plan runs afoul of any requirement imposed by the Fifth Circuit’s *Highland Capital* opinion (which

they do not),<sup>27</sup> there can be no question that the Court must apply them here as set forth in the confirmed Plan.

15. Additionally, implicit in Choudhri's Motion is an argument that, but for the gatekeeping provisions, the Court would not have jurisdiction over the Pending Actions. But that implicit argument is wrong.

16. There can be no question that this Court has related-to jurisdiction over the Pending Actions. As this Court has held:

The Supreme Court has noted "related to" bankruptcy proceedings include "(1) causes of action owned by the debtor which become property of the estate pursuant to 11 U.S.C. § 541, and (2) suits between third parties which have an effect on the bankruptcy estate." *Arnold v. Garlock*, 278 F.3d 426, 434 (5th Cir.2001) (citing *Celotex Corp. v. Edwards*, 514 U.S. 300, 308 n.5, 115 S.Ct. 1493, 131 L.Ed.2d 403 (1995)). The Fifth Circuit has stated that a matter is related to a case under title 11 if "the outcome of that proceeding could *conceivably* have any effect on the estate being administered in bankruptcy." *Wood*, 825 F.2d at 93 (citing *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3rd Cir.1984)). Even when there is a possibility a suit may ultimately have no effect on the estate, this possibility is not enough to conclude there would be no *conceivable* effect. *Id.* "Certainty or even likelihood of such an effect is not a requirement." *Arnold*, 278 F.3d at 434 (citing *In re Canion*, 196 F.3d 579, 588 (5th Cir.1999)).

*In re Mugica*, 362 B.R. 782, 788 (Bankr. S.D. Tex. 2007) (emphasis added).

17. The Fifth Circuit has also held that related-to jurisdiction may extend to non-debtors' state-law disputes after the plan is confirmed. *Feld v. Zale Corp. (In re Zale)*, 62 F.3d 746, 757-59 (5th Cir. 1995).

18. With respect to the "lender liability" claims cited throughout Choudhri's Motion, the Debtor was the borrower, and the estate released all of its claims against NBK under the Plan.

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<sup>27</sup> *Matter of Highland Cap. Mgmt., L.P.*, 48 F.4th 419 (5th Cir. 2022), *cert. denied sub nom. Highland Cap. Mgmt., L.P. v. Nex-Point Advisors, L.P.*, 144 S. Ct. 2714 (2024), and *cert. denied sub nom. NexPoint Advisors, L.P. v. Highland Cap. Mgmt., L.P.*, 144 S. Ct. 2715 (2024).

Nearly identical claims were asserted by Naissance in *Naissance I*, and the *Galleria I Adversary* and *Choudhri Intervention Action* each of which are already pending in this Court.

19. Under these circumstances, there is no doubt that post-confirmation related-to jurisdiction exists.

20. Furthermore, post-confirmation core jurisdiction also exists, and the evaluation by this Court of the various claims asserted by Mr. Choudhri necessarily means comparing the identical nature of those claims to the released estate claims. Mr. Choudhri has not established that the claims he asserts are his direct claims against NBK, and not just repackaged estate claims that have been released or dismissed altogether. If they are just repackaged estate claims, it is well within this Court’s core jurisdiction to prohibit their prosecution in aid of confirmation of the Plan and in the exercise of its inherent power to enforce its own order confirming the Plan and approving the releases of estate claims against NBK.<sup>28</sup>

**B. The Appropriate Standard Is the *Highland Capital* Gatekeeper Colorability Test**

21. In *Highland Capital*, United States Bankruptcy Judge Jernigan undertook the most comprehensive analysis of the proper standard to apply when determining the “colorability” of a claim in the context of gatekeeping provisions in a chapter 11 plan.

The court concludes that the appropriate standard to be applied in making its “colorability” determination in *this* bankruptcy case, in the exercise of its gatekeeping function pursuant to the two Gatekeeper Orders and the Gatekeeper Provision in *this* Plan, is a broader standard than the “plausibility” standard applied to Rule 12(b)(6) motions to dismiss. It is, rather, a standard that involves ***an additional level of review***—one that places on the proposed plaintiff a burden of making a prima facie case that its proposed claims are ***not without foundation***, are ***not without merit***, and are ***not being pursued for any improper purpose such as harassment***. Additionally, this court may, and should, take into consideration its ***knowledge*** of the ***bankruptcy proceedings*** and ***the parties*** and any additional evidence presented at the hearing on the Motion for Leave. For ease of reference,

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<sup>28</sup> See Defendant National Bank of Kuwait, S.A.K.P., New York Branch’s Objection to Emergency Motion to Remand of Ali Choudhri [Adversary No. 03120, Docket No. 9].

the court will refer to this standard of “colorability” as the “Gatekeeper Colorability Test.” The court considers this test as a sort of hybrid of what the *Barton* doctrine contemplates and what courts have applied when considering motions to file suit when a vexatious litigant bar order is in place.

*In re Highland Cap. Mgmt., L.P.*, No. 19-34054-SGJ-11, 2023 WL 5523949, at \*41 (Bankr. N.D. Tex. Aug. 25, 2023) (emphasis in original). Judge Jernigan emphasized “**this** bankruptcy case” and “**this** Plan” because “[i]n determining what appropriate legal standard applies here in the ‘colorability’ analysis, the context in which the Gatekeeper Provision of the Plan was approved seems very relevant.” *Id.* at \*38.

22. To the extent that the FED. R. CIV. P. 12(b)(6) plausibility standard is applicable, a court is not just permitted, but is required, to rely upon its judicial experience and common sense in its application.

The plausibility standard is not akin to a probability requirement, but it asks for more than a sheer possibility that a defendant has acted unlawfully. Factual allegations that are merely consistent with a defendant’s liability, stop short of the line between possibility and plausibility of entitlement to relief, and thus are inadequate. Accordingly, the requisite facial plausibility exists when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. Determining whether a complaint states a plausible claim for relief is a context-specific task that **requires** the reviewing court to draw on its **judicial experience** and **common sense**.

*Inclusive Communities Project, Inc. v. Lincoln Prop. Co.*, 920 F.3d 890, 899 (5th Cir. 2019) (quotations and citations omitted) (emphasis added).

23. Thus, it is entirely appropriate for the Court to view Mr. Choudhri’s claims through the lens of its knowledge of the bankruptcy proceedings and the parties, including the time “spent over two days June 17 and 19, 2024, hearing specific evidence regarding the disputes between the Debtor, its principal and the NBK,”<sup>29</sup> and any party’s credibility deficit resulting therefrom.

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<sup>29</sup> Memorandum Opinion at 16.

**C. Mr. Choudhri's Claims Do Not Satisfy Any of the Requirements Under the Gatekeeper Colorability Test**

24. As stated in NBK's Motion, the Pending Actions assert the same basic facts and claims that this Court found lacked foundation and merit. The lender liability claims in the Pending Actions hinge upon an alleged breach by NBK of the CSA. These claims and NBK's alleged breach of the CSA were explored on several occasions in this case, including in the motion to prohibit credit bidding,<sup>30</sup> at the hearing on NBK's motion to convert, and – most thoroughly – at the confirmation hearing.

25. The CSA was a key evidentiary document evaluated by the Court at the confirmation hearing, including the following provisions whereby Mr. Choudhri waived claims against NBK.

(a) Acknowledgement of the Indebtedness. As of the Effective Date, Choudhri, Galleria and Naissance acknowledge and agree that NBK is owed \$60,212,816.90 under the Loan Documents, **without defenses, setoffs, claims, counterclaims or deductions of any nature whatsoever, all of which are hereby expressly waived;**

(b) Acknowledgment of Existing Defaults. Galleria, Choudhri and Naissance further acknowledges and agrees that: (i) an Event of Default exists under the Loan Documents, (ii) any cure period with respect thereto has expired, (iii) all principal, interest, fees, costs and other charges due under the Loan Documents are fully accelerated and immediately due and owing to NBK **without defenses, setoffs, claims or counterclaims or deductions of any nature whatsoever all of which are hereby expressly waived, . . . .**

Memorandum Opinion at 5 (emphasis in original).

26. A cursory review of the Pending Actions makes clear that they allege claims based on conduct that allegedly occurred before the CSA was executed. These claims have been expressly released by Mr. Choudhri, and he presents no credible argument or fact that would support vitiating Mr. Choudhri's release.

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<sup>30</sup> Docket No. 353.



27. Furthermore, to the extent that Mr. Choudhri contends that there was a post-execution breach of the CSA that should void the releases, or that gives rise to new post-execution claims for breach, the Court found no evidence NBK breached the CSA, after evaluating the documentary evidence and Mr. Choudhri's own allegations.

The Debtor's principal strongly feels that he is a victim of unusual circumstance, COVID but mostly the actions of NBK. He strongly complains that the actions of NBK have caused him to default, face foreclosure and that it should pay for its actions [whatever they may be]. However, this totally ignores two distinct facts (1) that the Debtor via his principal has never been able to pay the original note, or his Confidential Settlement Payment or his extended Confidential Settlement Payment which was a sizable discount on the original amount of the Note; (2) the record in this case does not support his sizable but implausible claims. The Court notes two specific allegations. ***First, the allegation that NBK faces a large lender liability claim based on the CSA and second, that NBK breached that agreement first and therefore the Debtor's breach of the CSA by not paying over \$26 million dollars was somehow acceptable. The Court invites the parties to examine the record to find any evidence that either of these facts are true.*** Yes, the Debtor had lawyers testify that the Debtor had claims but they never explained how or why these claims arose, just that they existed. Additionally, the Court notes that the Chapter 11 Trustee interviewed these attorneys and discounted their claims. Their testimony was incomplete and not believable given the lack of documentary evidence. Just because a lawyer tells this Court or any Court that its client or potential client has a great claim for damages does not make it so or the presentation of evidence in hearings would become superfluous.

Memorandum Opinion at 17 (footnotes omitted) (emphasis added).

28. Because the Court found that NBK did not breach the CSA, Mr. Choudhri's express waiver of claims against NBK under the CSA remains in effect, and there is no claim for a post-CSA breach. The claims asserted, therefore, are neither colorable nor viable.

29. Moreover, Choudhri's Motion altogether fails to introduce any new documentary evidence supporting the argument that the Court has not heard "a full airing of the evidence" before concluding that Mr. Choudhri's claims lack merit. Mr. Choudhri's evidence has been presented and found wanting. For example:

- Exhibit 3 to Choudhri's Motion is attached to support the allegation Osama Abdullatif "arranged to have hard drives seized from Choudhri's companies." This allegation was

raised in the *Motion to Disqualify Rodney Drinnon as Counsel* [Adversary. No. 23-03259, Docket No. 10].

- Exhibit 4 to Choudhri's Motion is attached to support the allegation that Abdullatif "arranged for Choudhri to be accused of a murder-for-hire plot to kill Abdullatif himself, which authorities dismissed as 'a hoax.'" This allegation was raised in 2425 WL, LLC's *Motion for Reconsideration and Relief from Judgment* [Docket No. 740] concerning the disallowance of Proof of Claim No. 7, which the Court denied [Docket No. 743]
- Exhibit 5 to Choudhri's Motion is attached to support the allegation that Abdullatif's attorney "admits to representing Abdullatif and Zaheer in furtherance of Abdullatif's avowed goal of seizing all of Choudhri's business interests through litigation—under their theory: 'If [Ali] own[s] it, we own it.'" This allegation was also raised in the *Motion for Reconsideration and Relief from Judgment*.

30. Leaving aside that none of these allegations involve alleged conduct by NBK, there simply is nothing in Choudhri's Motion that the Court has not already considered in assessing the foundation and merit of the claims at issue. Furthermore, the Court has had ample opportunity to assess Mr. Choudhri's purpose for pursuing these claims and likewise found them to be improper. Therefore, although the Gatekeeper Colorability Test requires that all three prongs – foundation, merit, and purpose – be satisfied, Mr. Choudhri's claims fail to satisfy a single component of the test.

### **CONCLUSION**

For the foregoing reasons, NBK respectfully requests that this Court deny Choudhri's Motion, enforce the Plan's gatekeeping provisions by requiring the Pending Actions to be dismissed, and sanction Mr. Choudhri for his continued pursuit, without any new evidence, of claims this Court has already found to be meritless.

DATED: November 20, 2024

**PILLSBURY WINTHROP SHAW PITTMAN LLP**

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***Counsel for National Bank of Kuwait, S.A.K.P., New  
York Branch***

**CERTIFICATE OF SERVICE**

I hereby certify that, on November 20, 2024, a true and correct copy of the forgoing Objection was served via the Court's CM/ECF system on all counsel of record who are deemed to have consented to electronic service.

/s/ Charles C. Conrad  
Charles C. Conrad

## **EXHIBIT A**

1 UNITED STATES BANKRUPTCY COURT  
2 SOUTHERN DISTRICT OF TEXAS  
3 HOUSTON DIVISION

3 In re ) CASE NO: 23-34815 (JPN)  
4 )  
4 GALLERIA 2425 Owner, LLC, ) Houston, Texas  
5 )  
5 Debtor. ) Wednesday, June 19, 2024  
6 )  
6 ) 9:00 a.m. to 4:54 p.m.  
-----)

7  
8 TRIAL

9 BEFORE THE HONORABLE JEFFREY P. NORMAN  
10 UNITED STATES BANKRUPTCY JUDGE

11 APPEARANCES:

12 For Debtor: REESE W. BAKER, ESQ.  
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17  
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1           HOUSTON, TEXAS; WEDNESDAY, JUNE 19, 2024; 9:00 a.m.

2                               (Call to Order)

3                   CLERK: All rise.

4                   THE COURT: Please be seated. So we are on the  
5 record for Wednesday, June 19th, 2024. It's 9:00 a.m.  
6 There is one matter set on the docket.

7                   I apologize for the air conditioning situation.  
8 We are working diligently to correct it, but sometimes I  
9 can't control what goes on at the courthouse, and this is  
10 one of those situations. All right.

11                   23-34815, Galleria 2425 Owner, LLC. Let me take  
12 appearances first please and we'll just go around the room.  
13 Go ahead.

14                   MR. TROOP: I'm standing up here, Your Honor.  
15 Good morning, Your Honor. Andrew Troop from Pillsbury  
16 Winthrop Shaw Pittman on behalf of National Bank of Kuwait.  
17 I am here today with my colleagues, Charles Conrad, Thomas  
18 Morris, and Kwame Akuffo. We have some people on the line  
19 as well.

20                   As a quick aside, Your Honor, thank you. I meant  
21 to thank you on Monday. But we actually had summer  
22 associates observing the hearing on Monday and taking up  
23 your bandwidth. And we appreciate that.

24                   Our corporate representative and a witness,  
25 Michael Carter, is also here today, Your Honor.



1 THE COURT: All right. Thank you. All right.

2 The objecting parties.

3 MR. BAKER: Reese Baker on behalf of the Debtor.

4 THE COURT: Thank you, Mr. Baker.

5 MR. BURKS: Good morning. It's Gray Burks, B-U-R-  
6 K-S, on behalf of 2425 WL. Good morning.

7 THE COURT: Thank you. Good morning.

8 MR. SATHER: Stephen Sather, also appearing on  
9 behalf of 2425 WL, LLC, Your Honor.

10 THE COURT: Thank you so much.

11 MR. SHANNON: Your Honor, just for the record  
12 since we're here, RJ Shannon on behalf of the Chapter 7  
13 Trustee, Christopher Murray.

14 THE COURT: Mr. Shannon, does the Trustee intend  
15 to take a position relative to plan confirmation?

16 MR. SHANNON: The trustee supports confirmation,  
17 although we did not file anything in support. But we do  
18 support the confirmation, Your Honor.

19 THE COURT: You want to be involved in the witness  
20 process at all?

21 MR. SHANNON: Not unless it's the trustee being  
22 questioned, Your Honor.

23 THE COURT: Okay, that's fine. All right. Thank  
24 you.

25 All right, Mr. Troop, I think your client is the

1 plan proponent. So you have the burden. So I'll let you  
2 make an opening statement if you want to make one.

3 MR. TROOP: Sure, Your Honor. First I would like  
4 to -- I do have a short opening statement where I suggest to  
5 you how I think the day should go, talk about where we are  
6 on a few things.

7 First, Your Honor, let's just sort of lay the land  
8 in terms of what's in play today. Right? There were  
9 several objections filed, mostly taxing authorities --

10 THE COURT: Which both were withdrawn.

11 MR. TROOP: They've been withdrawn.

12 THE COURT: There are two pending objections right  
13 now I'm aware of though.

14 MR. TROOP: Exactly. That's it. Just two  
15 pending. You speak much faster than I do, Your Honor. So  
16 maybe Mr. Burks (indiscernible).

17 Your Honor, yesterday we spent some time with Mr.  
18 Burks about some things at the hearing. So let me tell you  
19 what we have been able to agree to and what we haven't been  
20 able to agree to.

21 We have agreed that between us there should only  
22 be three witnesses today.

23 THE COURT: Okay.

24 MR. TROOP: Michael Carter, the trustee, Chris  
25 Murray, and Mr. Choudhri.

1           We also agreed to the admission of all the  
2       exhibits on our respective exhibits lists save two.

3           THE COURT:   So let's go ahead and do that now so  
4       that it's on the record and we can just basically deal with  
5       it.

6           So there's an exhibit list from 531.   Is that the  
7       one you were making reference to?

8           MR. FITZMAURICE:   Your Honor, the bank's exhibit  
9       list at 501.

10          THE COURT:   501.   We're going way, way back, huh?  
11       Okay, so 501.   Any of the exhibit at 501 are exhibits that  
12       we are not admitting?

13          MR. FITZMAURICE:   Yes.   We understand that 2425  
14       objects to Exhibit 23, which is Mr. Carter's declaration,  
15       and Exhibit 18, which we call on the list evidence of the  
16       bank's ability to make its required plan payments.   But  
17       that's the annual report.

18          THE COURT:   All right.   And so let's do one thing  
19       at a time.   So as to 501, Mr. Burks, do you have any  
20       objection to any of the exhibits save and except 23 and 18  
21       which we'll deal with in due course?

22          MR. BURKS:   Only half of 2425 WL -- and I'm  
23       looking at 501 Exhibits 1 through...

24          THE COURT:   501 actually only goes to 22 is what  
25       I'm seeing.

1 MR. BURKS: I have through 26.

2 MR. FITZSIMMONS: So I think, Your Honor, on the  
3 list there are some that are to be filed. And they were  
4 filed in the future. So they may actually have different  
5 ECF references when they actually hit the docket.

6 THE COURT: Okay. So let me just make sure the  
7 record is clear. So I'm looking at the docket right now.  
8 And I'll just show it to you. It makes it easier. Okay?

9 501 starts at Exhibit 1 and then goes through 21.  
10 But 21 references Exhibit 22.

11 MR. FITZSIMMONS: So I think for these, Your  
12 Honor, as I understand the agreement it's all of these save  
13 for, except for number 18.

14 MR. BURKS: So at this point then from the  
15 exhibits that Your Honor has called, to make the record  
16 straight, Exhibits 1 through 17 --

17 THE COURT: And again the problem with that, Mr.  
18 Burks, is Exhibit 1 through 17 doesn't work electronically.  
19 It's got to be by ECF number. So that's the reason I'm  
20 going ECF 501-1, dash two, dash three. They don't  
21 apparently match, which is part of the problem. Yeah.  
22 Maybe whoever is on the record.

23 MR. BURKS: And what am I stipulating to? Do I  
24 have to look at each on the docket?

25 THE COURT: Well, I haven't looked at 501. I

1 don't know. I mean -- but so you get to Exhibit --

2 MR. BURKS: May I have a moment? I see what  
3 you're doing. May I have a moment?

4 THE COURT: Yeah. Uh-huh.

5 MR. BURKS: Mr. Troop will help me.

6 THE COURT: And if you want to look -- I can pull  
7 them up and show you what they are if you want to know.

8 MR. BURKS: The way I understand it works is for  
9 501 for the ECF numbers, Exhibit 1 is 501.1.

10 THE COURT: That's correct.

11 MR. BURKS: Exhibit 2 is --

12 THE COURT: So the docket is going to reflect that  
13 I admit exhibits by ECF number. ECF 501-1, 501-2, 501-3.  
14 The exhibit numbers mean nothing to me.

15 MR. TROOP: Right. So for your --

16 MR. BURKS: I'm with you.

17 MR. TROOP: Okay.

18 MR. BURKS: May I see, Your Honor, will you click  
19 on 501-18?

20 THE COURT: Sure.

21 MR. BURKS: And maybe scroll down?

22 THE COURT: It's going to come. It just takes a  
23 minute to download.

24 MR. BURKS: All right.

25 THE COURT: That is 501-18.

1 MR. BURKS: Can you scroll up?

2 THE COURT: That's the top of the document. If  
3 you want to look at the top, it says 501-18.

4 MR. BURKS: So what I stipulated to was 501-19.

5 May I see 17?

6 THE COURT: Sure. Hold on for one second. Did  
7 you say 17?

8 MR. BURKS: Yes, please.

9 THE COURT: Seventeen looks like it's marked  
10 Exhibit 18.

11 MR. TROOP: Your Honor, I can help clear this up.  
12 Okay?

13 MR. BURKS: Because I don't know...

14 MR. TROOP: There is a disconnect in terms of  
15 between this exhibit list and what actually got filed. The  
16 document that Mr. Burks wants to object to is the document  
17 that is entitled Evidence of Feasibility, Your Honor. And  
18 we'll look for that exact ECF number for you and bring it up  
19 and make it clear on the record that Mr. Burks has not  
20 agreed to the admission of that exhibit.

21 THE COURT: So let's just do this. I'll  
22 conditionally admit everything in 501 except whatever comes  
23 up that we're not going to stipulate to. Okay?

24 And Mr. Burks is grimacing, and I understand his  
25 grimace.

1 MR. BURKS: I don't know what I've just stipulated  
2 to. So I'm looking at a list that's apparently on the right  
3 list.

4 THE COURT: Well, I think it's the right list. I  
5 think it's just the way it's been filed. And the problem is  
6 how we're going to refer to it on the record. So why don't  
7 we --

8 MR. BURKS: All right. Let's try this.

9 THE COURT: Okay.

10 MR. BURKS: We can stipulate to everything except  
11 in the exhibit entitled Evidence of NBK's Ability to Make  
12 its Required Plan Payments and an exhibit called Carter's  
13 Declaration.

14 With that said --

15 THE COURT: Hold on.

16 MR. BURKS: I know. With that said, may I reserve  
17 the right when I see an exhibit that I --

18 THE COURT: To object to it.

19 MR. BURKS: I didn't know that I was stipulating  
20 to that I object to, that I may object to it. Because this  
21 is a little awkward because I don't know what I'm -- I don't  
22 know what I'm stipulating to.

23 THE COURT: That's fine.

24 MR. TROOP: We're fine with that, Your Honor. I  
25 think conceptually we all understand that (indiscernible)

1     been reserved.

2                 THE COURT: All right. Mr. Sather, do you have  
3     something you want to say?

4                 MR. SATHER: I was just going to say that those  
5     two documents were filed as one document at 514-2 as an  
6     attachment to the bank's brief.

7                 THE COURT: Okay. All right. So the record is  
8     clear, I am going to admit Exhibits 501-1 to 501-22 with the  
9     exception of anything that references the evidence of NBK's  
10    ability to make plan payments and then the Carter  
11    Declaration plus Mr. Burks reserves the right to object to  
12    any other document that basically comes up during testimony.

13                MR. BURKS: Because 1 through 22 may include --  
14    I'm looking at --

15                THE COURT: I understand. And I reserve your  
16    right to object to it. Okay? So those are now done.

17                Is there other exhibits that Mr. Burks has that  
18    we're going to stipulate to admissibility?

19                MR. TROOP: Your Honor, we will stipulate to the  
20    admissibility of all of the documents. With respect to some  
21    of them, Your Honor, that were filed yesterday, we  
22    understand that they were intended to be used to address  
23    some question as to whether or not the sale was going to  
24    include furniture (indiscernible) equipment that it is  
25    alleged that the trustee doesn't own. And I believe that we



1 agreed yesterday that the asset purchase agreement is  
2 intended only to purchase that which the Trustee can  
3 transfer to us. If the Trustee can't transfer to us --

4 THE COURT: Which is the rule of law anyway.

5 MR. TROOP: Exactly.

6 THE COURT: So --

7 MR. TROOP: No skin off our nose, Your Honor. I'm  
8 not -- I'm just saying I think --

9 THE COURT: Mr. Burks, do you have exhibits that  
10 you want me to put into evidence right now given the  
11 stipulation?

12 MR. BURKS: Yes, Your Honor. I don't know the ECF  
13 numbers.

14 MR. SATHER: We've been using 499, which was  
15 Reese's set. And it would be 1 through 93. Before we get  
16 into all the supplemental ones.

17 MR. BURKS: Yes, Your Honor. At this point I  
18 offer into evidence 2425 WL's Exhibits 499-1, 499-2, 499-3,  
19 499-5, 499-6, 499-7, 499-8, 499-9, 499-10, 499-12, 499-34,  
20 546 -- may see the Docket 541 -- 546. So I understand what  
21 you're doing. And I just want to make sure that I'm  
22 referring to the correct ECF numbers, Your Honor.

23 THE COURT: It's the exhibit list you filed  
24 yesterday.

25 MR. BURKS: So what I called Exhibit 96, is that

1 546-1?

2 THE COURT: I don't know without looking. Bear  
3 with me for one second.

4 MR. BURKS: And, Mr. Troop, you're following along  
5 with me so I can make sure our stipulation is accurate?

6 MR. TROOP: We are keeping up.

7 MR. BURKS: Thank you.

8 THE COURT: That's it right there?

9 MR. BURKS: Yes. That is -- and that's 546-1?

10 THE COURT: Mm-hmm.

11 MR. BURKS: All right. So offer into evidence  
12 546-1, 546-2, 546-3, 546-4, 546-5, and 546-6. May I see 6  
13 on the screen just so I know that I've got this right?  
14 That's what I offer at this time, Judge.

15 THE COURT: All right. Then I will admit based on  
16 the lack of objection by Mr. Troop 499-1 through 10, 499-12,  
17 499-34, 546-1, 546-2, 546-3, 546-4, 546-5, and 546-6.

18 MR. BURKS: Reserve the right to of course call --  
19 offer any rebuttal exhibits, Judge.

20 THE COURT: That's fine.

21 MR. BURKS: Thank you.

22 THE COURT: Mr. Troop, back to you.

23 MR. TROOP: Mr. Baker. I'm sorry.

24 MR. BAKER: On behalf of the Debtor, we would like  
25 to also have the same exhibits that 2425 WL is offering.

1 THE COURT: They are admitted on the record and  
2 you can use them for whatever purpose you would like, Mr.  
3 Baker.

4 MR. BAKER: Thank you.

5 THE COURT: Thank you.

6 MAN 1: Your Honor, there are a number of people  
7 on GoToMeeting who I don't believe had an opportunity to  
8 announce their appearance, including the U.S. Trustee.

9 THE COURT: The only person that I'm currently  
10 seeing is Mr. Choudhri, and I am taking notice of his  
11 position. So we're good to go. Thank you. Ms. Whitworth,  
12 do you want to make an appearance?

13 MR. CHOUDHRI: Your Honor?

14 THE COURT: Mr. Choudhri, hold on for one second.  
15 Ms. Whitworth, do you want to make an appearance?

16 MS. WHITWORTH: Yes. Good morning, Judge. Jana  
17 Whitworth on behalf of the United States Trustee. Thank  
18 you.

19 THE COURT: All right. Thank you.

20 MR. TROOP: Thank you.

21 THE COURT: Mr. Choudhuri, I note your appearance  
22 for the record. Do you have something else you want to say?

23 MR. CHOUDHRI: Yes, Your Honor. I would like to  
24 make (indiscernible) and I would like to --

25 THE COURT: Excuse me, sir. I didn't -- go ahead.

1 MR. CHOUDHRI: Yes, Your Honor. I would like to  
2 make an appearance and I would like to announce my  
3 appearance and I would like to make an oral motion right  
4 now, Your Honor, for continuance. I have felt very, very  
5 ill yesterday. I'm not in good condition. And I would  
6 refer to ECF number document 442-1, which I presented for a  
7 continuance that I believe was denied, Your Honor. But  
8 since then I have felt very, very ill yesterday and I am not  
9 in good condition. And so I don't want to be forced to go  
10 forward. So I would ask for a very short continuance, Your  
11 Honor. So I would like to make an oral motion of that due  
12 to my stroke that I am -- that I suffered from.

13 And then second, the doctor on the 6th and 7th of  
14 June and I was advised by the cardiologist that I should not  
15 take on any stress or work until July 7th. I've been in the  
16 hospital fighting for my health, I'm fighting for my  
17 finances. So I would urge for -- an oral motion here for an  
18 emergency continuance of this hearing. That's my first oral  
19 motion, Your Honor.

20 THE COURT: All right. Mr. Choudhri, let me rule  
21 on your oral motion. And let me be clear for the record.

22 The first problem you have, Mr. Choudhri, is the  
23 fact that we have at this point in time one, two, three,  
24 four, five, six, seven, eight, nine lawyers in the courtroom  
25 who are all billing at very, very high rates. And for you

1 to come in at the last minute and ask for a continuance I  
2 think is unfortunately too little too late.

3 I also will state for the record, Mr. Choudhri,  
4 that you are a little bit like the boy who cries wolf.  
5 Okay? I've seen an emergency motion to continue this  
6 hearing based on a stroke. Two days later you appeared at a  
7 hearing. You appeared at a nine-hour hearing the other day  
8 where you appeared to do just fine where counsel got up and  
9 said that you were suffering so badly that you couldn't even  
10 participate and you participated a great deal. Okay?

11 I hold all those things against you, Mr. Choudhri.  
12 I am going to deny your motion. Thank you.

13 Do you have another motion you want to make?

14 MR. CHOUDHRI: I do, Your Honor. I would like to  
15 make a motion because when the motion for continuance was  
16 made by 2425 WL, as I walked in the courtroom, I was asking  
17 to make a motion for a continuance. Your Honor would not  
18 hear it --

19 THE COURT: I am denying any sort of request for a  
20 continuance at this point in time, Mr. Choudhri. If that's  
21 what you intend to argue or make a motion for, I'm not going  
22 to hear it. Do you have some other motion you want to make?

23 MR. CHOUDHRI: I do, Your Honor. I would make a  
24 motion based on the fact that after that motion for  
25 continuance was filed, Your Honor went outside the record to

1 investigate the motion. And I believe Your Honor is biased  
2 against me and investigating the case outside of the record  
3 that was before you. You had made some comments, Your  
4 Honor, that you had spoken to maybe --

5 THE COURT: I did speak to Judge Isgur about your  
6 appearance in front of him. That's correct. I don't  
7 consider that to be improper our outside the record or  
8 create any sort of problem for me hearing your case.

9 MR. CHOUDHRI: Right, well --

10 THE COURT: And so I will acknowledge on the  
11 record, I did do that.

12 MR. CHOUDHRI: So my mental abilities are limited  
13 --

14 THE COURT: Mr. Choudhri, I'm going to cut you  
15 off. I've ruled on your motion. We're done. All right?  
16 You may participate in this hearing. I'm willing to let you  
17 participate. I'm willing to let you make whatever arguments  
18 you want to make. I'm not continuing this hearing. Mr.  
19 Troop, back to you.

20 MR. CHOUDHRI: Your Honor --

21 MR. TROOP: Thank you.

22 MR. CHOUDHRI: -- are you denying the motion --

23 THE COURT: Mr. Choudhri, no. I already denied it  
24 on the record, Mr. Choudhri, for all the reasons I just  
25 said. Okay? Thank you. Thank you.

1 MR. CHOUDHRI: The motion for -- excuse me, Your  
2 Honor.

3 THE COURT: It's denied. Thank you.

4 Mr. Troop?

5 MR. TROOP: Thank you, Your Honor. Why don't we  
6 stay on some procedural housekeeping matters.

7 THE COURT: Sure.

8 MR. TROOP: This morning, Your Honor, there was a  
9 witness list and exhibit list filed by Jetall, which is an  
10 affiliate of Mr. Choudhri. They have not objected. They  
11 don't have an objection on file. And as far as I can tell -  
12 - I mean, I don't know whether they have a lawyer on the  
13 phone or not, but there are entities, Your Honor. That  
14 strikes me as late, inappropriate ambush and the like. And  
15 I would move that that witness list and exhibit list be  
16 stricken.

17 THE COURT: And is that -- I'm not seeing that on  
18 the record. Is it just -- I mean...

19 MR. TROOP: Try 548, Your Honor. ECF 548.

20 THE COURT: Okay. Bear with me for one second.  
21 So let me just be clear. I came in the courtroom at 8:00  
22 and set up my computer system. All right? It loads the  
23 docket at that point in time. So the record is clear, this  
24 is what the docket reflects. It reflects only the 547,  
25 which means it was filed after 8:00 this morning. All

1 right?

2 MR. TROOP: Yes, Your Honor.

3 THE COURT: I'm going to refresh now and look at  
4 it.

5 There is an exhibit witness list followed by  
6 Jetall Companies on -- after 8:00 this morning at 548. I'm  
7 going to find that it's untimely, that it's late, that the  
8 objection deadline for objections to confirmation have  
9 passed and that Jetall Companies Inc. can't participate in  
10 the confirmation hearing. And so the record is clear, the  
11 Court spent a great deal of time preparing for this hearing.  
12 There were at the time of my review after the objection  
13 deadline four objections to confirmation. 286, which is the  
14 City of Houston objection that has been withdrawn; an  
15 objection by CC2 which was filed late, which I was going to  
16 disallow but was also withdrawn; an objection by the debtor  
17 at ECF 409 and an objection by 2425 WL LLC at 401. Those  
18 are the two objections I plan to hear. All right? Thank  
19 you.

20 MR. TROOP: In that regard, Your Honor, just again  
21 to make the record clear, 2425 WL filed a supplemental  
22 objection on Friday, on 5/26. We have filed a response to  
23 that saying it's both untimely, the three new objections  
24 that were raised, the reasons given, which were we  
25 identified them after the deadline, we identified clearly



1     how there's nothing in there that wasn't known by the  
2     original deadline --

3             THE COURT: Hold on one second. Let me mute  
4     everybody on the line. Just mute everybody. Thank you so  
5     much.

6             MR. TROOP: I'm sorry, Your Honor.

7             THE COURT: I'll come back to the parties online.  
8     Go ahead.

9             MR. TROOP: And, Your Honor, we identified that it  
10    was all -- everything they needed to know they knew by the  
11    time the original June 3rd objection. They will argue on  
12    one of them with regard to voting that the summary of votes  
13    wasn't filed until June 7th -- on Friday the 10th as I  
14    recall. But it was perfectly clear that the NBK votes were  
15    being voted in favor of the plan. There was no reason to  
16    wait ten days, to the Friday before the original hearing  
17    that was scheduled to file at the end of the day  
18    supplemental objections on things that were at least well  
19    known for ten days. That's just unfair, Your Honor. It is  
20    additional ambush.

21            But I can address the merits as well of that  
22    particular one when you'd like. But effectively I think --

23            THE COURT: So let me just make this ruling on the  
24    record. The deadline for filing objections to the plan was  
25    June 3rd, 2024. All right? If it truly is a supplemental

1 response that simply basically amplifies what's previously  
2 been filed, I am more than happy to hear it. To the extent  
3 that it raises new objections, I'm not going to hear it.  
4 It's not timely. Thank you.

5 MR. TROOP: And again, Your Honor, I misspoke.  
6 That supplemental objection was filed on Sunday, the day  
7 before the hearing and not the Friday before the hearing.  
8 The record will show what it shows, Your Honor.

9 THE COURT: It shows what it shows. But again  
10 what's important is the reason the Court sets deadlines is  
11 because it then enforces those deadlines. Thank you.

12 MR. TROOP: Thank you, Your Honor. So with that,  
13 Your Honor, the way I think I would like -- I propose we  
14 proceed today --

15 THE COURT: Go ahead.

16 MR. TROOP: -- is that I'm going to give a very  
17 high-level overview of what we're here for today and what I  
18 at least see as the significant issues for you to decide. I  
19 would yield to the objecting parties and ask them to do the  
20 same at the high level. (indiscernible) witnesses at the  
21 end. Mr. Akuffo, our colleague, will go through the  
22 confirmation requirements and discuss how they've been  
23 satisfied to sort of wrap it up. Then I will probably  
24 address any other issues that have been raised during the  
25 course of the day. Although I guess we have to go last as

1 the moving party. So right before we talk, they get to talk  
2 about what they think about confirmation. Sorry about that,  
3 Your Honor.

4 THE COURT: All right.

5 MR. TROOP: Sorry about that.

6 Your Honor, at a very high level we are here today  
7 on the confirmation of the liquidating proposed by NBK  
8 today. There is -- there is no other alternative available  
9 and all of the confirmation requirements have been  
10 satisfied.

11 Your Honor, you have made perfectly clear that the  
12 issue that appears to be foremost in the Court's mind and  
13 the parties' minds based upon what's been filed so far today  
14 is whether this plan has been proposed in good faith.

15 And in that regard, Your Honor, I think there's  
16 really no dispute about the background here that led to this  
17 case. A loan that wasn't paid, an effort to foreclose.  
18 Multiple, multiple pieces of litigation in state court, a  
19 Chapter 11 filing on the eve of a foreclosure, a dismissal  
20 by Judge Lopez, a refiling again on the eve of the  
21 foreclosure, a motion by NBK to convert the case because it  
22 was very clear that this case, this asset required an  
23 independent fiduciary to manage its going-forward basis.

24 At that hearing, you decided not to appoint -- not  
25 to convert the case, but rather to appoint a Chapter 11

1 Trustee. Mr. Murray became the independent fiduciary. We  
2 were the secured creditor. We are the secured creditor, the  
3 largest secured creditor. Exclusivity terminated and we  
4 needed a plan -- and this is in the colloquial sense -- to  
5 move this case forward to conclusion. And the viable way to  
6 do that was to propose a plan of reorganization since we  
7 were in Chapter 11. We have the right to do so, and we did.  
8 And it is a fair plan, Your Honor. It was proposed in good  
9 faith. You'll hear testimony that as the fiduciary for the  
10 estate, we negotiated with Mr. Murray about the plan. The  
11 plan terms were changed to accommodate some, not all of its  
12 requests, like you would expect in any negotiation. And  
13 then we move forward in a transparent and open manner.

14 We have proposed a plan in good faith that, yes,  
15 provides NBK with releases of estate claims and we have  
16 proposed a plan of reorganization which enforces that  
17 release both through injunctions and a gatekeeping  
18 provision. But the gatekeeping provision, Your Honor, is  
19 not at all implicated by Highland Capital in the decision by  
20 the Fifth Circuit where the issue was whether or not  
21 gatekeeping could be used in that case to protect someone  
22 who was arguably not on the narrow list but nonetheless was  
23 sort of a quasi-fiduciary in a third-party release kind of  
24 way. All claims, any claims related to the Debtor or the  
25 estate were typically post-petition exculpation claims.

1 Emphasize that, Your Honor. The issue in Highland was  
2 exculpation.

3 The plan has been modified to make it clear that  
4 the only party receiving exculpation is the Chapter 11  
5 trustee. I don't think there can be any dispute that the  
6 Chapter 11 Trustee is a fiduciary covered by (indiscernible)  
7 entitled to be exculpated and protected both by injunctions  
8 and by gatekeeping.

9 So the only question is whether on the facts of  
10 this case, which are not dissimilar in some ways to  
11 Highland, having a non-debtor who is very litigious and  
12 arguably trying to pursue estate claims cabined in some way  
13 in terms of this conduct or the company's conduct. Similar  
14 there, but dissimilar because the gatekeeping function as it  
15 relates to NBK is only with respect to released claims.  
16 Released claims against NBK are only estate claims.

17 And the alternative, Your Honor, is that every  
18 time NBK would get sued, they would remove the case to this  
19 Court and seek to enforce the injunction. And here the  
20 process is that parties around the table, around the video,  
21 around anywhere, have to come here and say to you I am  
22 pursuing something that's not an estate claim, not  
23 frivolous, and I get to pursue it. And we can argue in  
24 front of you, and you decide. But at the end of the day  
25 it's only estate claims.

1 And in that regard, Your Honor, doesn't impact  
2 the good faith nature of the plan, doesn't impact anything  
3 else.

4 And back on good faith, Your Honor, the issue is  
5 whether the plan was proposed in good faith. The focus on  
6 that is predominantly on conduct during the Chapter 11 and  
7 in connection with preparing the plan and proposing the  
8 plan. It's not the things that you heard on Monday. It's  
9 not the things that you heard about prepetition conduct.

10 Embedded in here is a settlement of those claims.  
11 And the Trustee testified on Monday and we expect he will  
12 testify again today that in his independent reasonable  
13 judgement, that's a good settlement for the estate. But I  
14 note, Your Honor, and I hope we are careful today, subject  
15 to your rulings of course, that we don't retread a  
16 tremendous amount of ground that was addressed on Monday.  
17 They are two different motions. I understand there were  
18 objections sustained that pushed certain issues to here.  
19 Those issues should absolutely be addressed here.

20 But the fundamental question, which you ruled on,  
21 the Court holds that there must be some sufficient dispute  
22 between the parties. And all the parties are here, Your  
23 Honor. There's no one here who wasn't there who didn't have  
24 a full opportunity that it can find cause for disallowing or  
25 limiting credit bidding. Here it does not find any such

1       cause and denies the motion in its entirety.

2               But you went on, Your Honor, and you also found  
3       the movants, and especially (indiscernible) go to great  
4       lengths to pass blame for their nonpayment to NBK. The  
5       settlement payment. In effect, that he or others could not  
6       pay due to the actions of NBK. You found that on a review  
7       of the documentary evidence, and you could take judicial  
8       notice of all the documentary evidence in this case, does  
9       not believe -- does not believe these allegations. Does not  
10      believe these allegations. There's no credible claim there  
11      to waste our time on today.

12             And so, Your Honor, you may hear us object. A lot  
13      of it moves into that. And we hope now that you will --  
14      just a preview in terms of what our thinking on that would  
15      be.

16             Those seem to us to be the big issues. There  
17      can't be an issue about feasibility, there can't be an issue  
18      about classification -- that is that there are classes.  
19      There are so many things in that list that there cannot be  
20      issues about, Your Honor. So I hope that we focus today on  
21      the ones that are important and legitimately  
22      (indiscernible).

23             THE COURT: All right. Let me hear from the  
24      debtor first. Mr. Baker?

25             MR. BAKER: Your Honor, we would request that you

1 allow 2425 and Mr. Burks to go forward first at this point  
2 in time. We are generally filing along with what he is  
3 doing at this point in time.

4 THE COURT: I'm happy to do that if you want to  
5 waive your opening argument. If not, I want to hear it.

6 MR. BAKER: I'll waive my opening argument.

7 THE COURT: Thank you. Mr. Burks?

8 MR. BURKS: That was interesting. To borrow from  
9 a line from a movie, almost everything that that man said I  
10 disagree with. And here's why.

11 We don't have the burden of proof of confirmation.  
12 The proponent, NBK, does. There are 16 elements that  
13 they're going to have to prove up in 1129. Maybe this plan  
14 conceptually could have been confirmed. Technically, it's  
15 flawed. So flawed that it can't possibly meet the 16  
16 elements of 1129. We talk about what the scope of the  
17 objections are. I think the objection of 2425 WL is pretty  
18 clear. The objection of the Debtor is pretty clear on some  
19 of the technical faults.

20 The first thing that counsel for NBK said was this  
21 is the only option before the Court as far as the Chapter 11  
22 plan. Well, first of all, that was NBK's choice as to what  
23 was in the plan or not in the plan. It's an aggressive plan  
24 with respect to classification, it's an aggressive plan with  
25 respect to releases, and it's an aggressive plan in that he



1 only ballot accepting the plan is by the plan proponent.

2 And we'll get to that in a minute when we talk about

3 1129(a)(10).

4 I don't have the burden to prove that there is one

5 accepting class; NBK does. And the proponent is the only

6 one who accepted it. And so we have the gatekeeping issue

7 of do you even have one accepting class within the

8 definition of 1129(a)(10). The answer is a resounding no.

9 Surprisingly no. Don't know why we don't, but we

10 don't. Maybe if the balloting had been -- the solicitation

11 had been different, I'm not saying you can't get an

12 accepting class other than the proponent. But as we stand

13 here today right now -- or more accurately as of 8:00 a.m.

14 today -- we don't have an accepting class for two reasons.

15 Here's why.

16 The proof of claim on file by NBK has been

17 objected to. It has not been allowed. It has not been

18 estimated. No motion on notice and hearing has been filed.

19 Judge Rodriguez in In re Bressler said that's fatal to

20 confirmation as we stand here right now. Can it be fixed

21 later? I don't know. I don't know why they didn't file the

22 motion to estimate the claim. But we don't have a creditor

23 with an allowed for voting purposes claim on file. That

24 wasn't my choice. There's a lot of counsel in this room

25 that know how to practice bankruptcy law. I can't

1 substitute for them. And I can't relieve them of the burden  
2 of proof of showing that there's one allowed correct. But  
3 there's something else that's happening here. Of course we  
4 research whether or not the proponent of the plan can be the  
5 one -- could be if it has an allowed claim or an allowable  
6 or an estimated claim -- of course we'll research whether  
7 they could be. And the answer in all the six cases we found  
8 is they could be. But here we have a problem. We have NBK  
9 who has a note, has a proof of claim. And in that proof of  
10 claim, they can do really whatever they want with the debt.  
11 They can reduce it, they can eliminate some of it, they can  
12 do anything they want with their lien. And as the proponent  
13 of the plan, they've chosen to do just that. They've  
14 changed their rights. They've exercised their rights under  
15 the note and said here's how we are going to be treated.  
16 That's not an impaired claim. They've exercised their note  
17 rights and set forth in this plan how they will accept and  
18 agree to be paid. They've exercised their note rights.

19 Is it a novel argument? Yes. But is it a  
20 gatekeeping argument that they have the burden of proof to  
21 overcome? Yes. And here's why it's important. They didn't  
22 get any other votes for the plan. That's why it's  
23 important. I don't know if they tried. I don't know why  
24 they didn't. But you're sitting here right now with a plan  
25 that can't satisfy 1129(a)(10). We wish it could maybe.

1           Let's go back to the first thing he told you; it's  
2     the only option you have. Not true. There's nothing that  
3     prevents you from converting this case to Chapter 7. And  
4     that would take care of a lot of the issues here. When we  
5     get to the issues of what's the value of the claims being  
6     released, when we get to the issues, the technical issues of  
7     the plan, all will go away. No one is ever going to be able  
8     to prove that in between the time of today and the time this  
9     case may be converted that the value of the property is  
10    going to go down. It's not going to be able to be put into  
11    evidence.

12           Can another party file a plan? Can NBK file an  
13    amended plan? My point today is if what you had as of 8:00  
14    a.m. today is technically not (indiscernible). There's more  
15    to this. You bet it's an aggressive release. And it's not  
16    just a release...

17           THE COURT: Go ahead.

18           MR. BURKS: It's not a release of just -- or an  
19    exculpation of just the trustee. On Page 8 of the plan,  
20    Paragraph 78, it says released parties means, A, the Chapter  
21    11 Trustee. But it doesn't stop there. B, NBK. C, the  
22    liquidation trustee. D, each related party of each entity  
23    in Clause A through D. Former and current equity holders  
24    and their affiliates and related parties are not released  
25    parties. In other words, Mr. Choudhri or anybody else.

1           So I didn't write the definition of released  
2 parties. And I'm not going to mince words on the Fifth  
3 Circuit caselaw on exculpation versus gatekeeping versus  
4 released parties because a creditor has never been -- a  
5 creditor who is not participating in the reorganization of a  
6 debtor has never been gatekept. I don't know if that's a  
7 word or a phrase. Maybe it is now. Can you be gatekeep or  
8 gatekept if you have absolutely nothing to do with the  
9 reorganization? No.

10           Maybe the Purdue Pharma case might change that  
11 under certain circumstances. The facts of that case are so  
12 different than the facts of this case that there's no way  
13 that that's going to be precedent here.

14           What's happened is, Judge, the exculpation or  
15 release or gatekeeping provision is a technical bar to  
16 confirmation. Can this plan go forward and be confirmed  
17 without it? Sure it can. If the proponent chooses to. But  
18 what they want you to do is not only to confirm a plan, but  
19 to adjudicate today, right now here, three sets of claims  
20 where with all respect certainly we didn't put on evidence,  
21 we weren't trying those cases two days ago. Couldn't have  
22 if we tried. You wouldn't have let us because you ruled  
23 properly on the evidence as to what the issue was before us  
24 two days ago.

25           But today they want you to rule on the merits of

1 all pending litigation against NBK. And if they disagree  
2 with my point, then simply put in the confirmation order  
3 that any limited liability claim against NBK and any pending  
4 adversary proceedings removed or otherwise against NBK are  
5 not included in any injunctions, releases, or exculpations.  
6 If they're not, they're not. We can just say it. And we  
7 may be over very quickly here. If their intent is not to  
8 have this broad, overreaching release, make it clear. If  
9 their intent is to get a plan confirmed by the  
10 classification issues by including classifying claims the  
11 way Mr. Sather says are technically flawed, one vote, one  
12 party, then we've got a problem. We have a technical  
13 problem. I didn't write 1129, but they have to follow 1129.  
14 And they didn't do it here. Thank you.

15 THE COURT: Thank you. All right, Mr. Troop, back  
16 to you. I'll hear your first witness.

17 MR. TROOP: I was just going to say I don't think  
18 you expect me to respond, Your Honor.

19 THE COURT: No, I don't. I just expect you to  
20 call a witness.

21 MR. TROOP: So we'll call the witness and I'll  
22 turn this over to Mr. Fitzmaurice, Your Honor.

23 THE COURT: Thank you.

24 Mr. Carter, do you want to come forward, please?  
25 Again, if you'll stand at the microphone. I know we just

1 did this the other day. I'll swear you in and then you can  
2 be seated. And I apologize to you for the lack of air  
3 conditioning.

4 Please raise your right hand to be sworn. Do you  
5 swear or affirm to tell the truth, the whole truth, and  
6 nothing but the truth, so help you God?

7 MR. CARTER: Yes, I do.

8 THE COURT: All right. Please be seated. Sir,  
9 you know, the drill. Please speak into the microphone.

10 Mr. Fitzmaurice, I'll turn on the podium if you  
11 want to present from there.

12 MR. BURKS: Excuse me, Judge?

13 THE COURT: Yes.

14 MR. BURKS: Mr. Choudhri had his hand raise. I  
15 don't know if he's muted or not or --

16 THE COURT: He is muted. And I don't know why he  
17 would be trying to speak at this point in time.

18 MR. BURKS: Yes, Your Honor. I just wanted to  
19 make sure you saw it.

20 THE COURT: I saw it, yeah.

21 MR. BURKS: Yes, Your Honor.

22 THE COURT: Thank you.

23 DIRECT EXAMINATION OF MICHAEL CARTER

24 BY MR. FITZMAURICE:

25 Q Good morning, Mr. Carter. Mr. Carter, are you

1 currently employed at National Bank of Kuwait?

2 A Yes.

3 Q When did you join the bank?

4 A At the end of May of 2018.

5 Q Was that after the bank's loan to the Debtor was made?

6 A Yes.

7 Q I'm not trying to be obnoxious with this question, but  
8 is this your first job out of college? Is your job at the  
9 bank your first job since you graduated from college?

10 A No.

11 Q Have you worked in banking for most of your career?

12 A Yes.

13 Q About how long have you worked in banking?

14 A Since 1988.

15 Q During the course of your career in banking, have you  
16 focused on any particular industry?

17 A Real estate.

18 Q And has that focus on real estate continued during your  
19 time at the National Bank of Kuwait?

20 A Yes.

21 Q Are you generally familiar with the bank's loan to the  
22 Debtor?

23 A Yes.

24 Q And how are you familiar with the bank's loan to the  
25 Debtor?

1 A I am the RM for the loan, Relationship Manager.

2 Q Thank you. When did you assume that role as  
3 Relationship Manager?

4 A Around the end of 2018.

5 Q So from the time that you assumed that role as  
6 relationship manager up until today, have you maintained  
7 that role during that entire period?

8 A Yes.

9 Q And during that period of time is there anybody else at  
10 the bank who serves as relationship manager?

11 A Not as relationship manager, no.

12 Q Can you generally describe for the Court what your  
13 responsibilities are as relationship manager for the loan to  
14 the debtor?

15 A To do annual reviews on the status of the loan and  
16 provide those to the credit committees, monitor the interest  
17 payments and other conforming covenants that are in the loan  
18 agreement.

19 Q You mentioned credit committee. Do you sit on the  
20 credit committee?

21 A No.

22 Q In your capacity as a relationship manager, do you make  
23 recommendations to the credit committee?

24 A Yes.

25 Q Do you prepare reports that are submitted to the credit



1 committee?

2 A Yes.

3 Q As far as you are aware, since the time that you became  
4 the relationship manager for the loan to the Debtor, have  
5 there been any reports concerning the loan submitted to the  
6 correct committee that you weren't involved in preparing?

7 MR. BURKS: Objection. There is no way that he  
8 can know what he hasn't done. Calls for hearsay. Calls for  
9 speculation. He doesn't know -- he is not a member of the  
10 credit committee. He doesn't know what the credit committee  
11 has received, Your Honor.

12 THE COURT: I'll sustain the objection and let you  
13 rephrase it and see if you can get it in another way. Thank  
14 you.

15 BY MR. FITZMAURICE:

16 Q In the course of your duties as relationship manager  
17 for the bank, when a credit committee makes a decision  
18 relating to the loan, are you generally informed of that  
19 decision?

20 A Yes.

21 Q Has there ever been a decision that you've been  
22 informed of where you were not involved previously in  
23 preparing some kind of submission to the credit committee?

24 A No.

25 Q So has there ever been a decision by the credit

1 committee that you were informed of that you were surprised  
2 about or you had no idea that was happening?

3 A No.

4 Q Have you issued any reports to the credit committee  
5 concerning this bankruptcy case?

6 A Yes.

7 Q Have you made any recommendations to the credit  
8 committee concerning this bankruptcy case?

9 MR. BURKS: Objection. Best evidence rule. If  
10 the recommendations or if the reports are oral, hearsay. If  
11 they are written, I would like to see them in evidence,  
12 please.

13 THE COURT: If they are oral, I don't think they  
14 are hearsay. If they are written, then I think there is  
15 best evidence. I'll sustain the objection on that  
16 particular part. But I'll let him flesh it out. He hasn't  
17 said whether they were written or not.

18 MR. BURKS: Yes, Judge.

19 THE COURT: Thank you.

20 BY MR. FITZMAURICE:

21 Q Have you had any discussions with the credit committee  
22 concerning this bankruptcy case?

23 A It has been mentioned in credit reviews. We do monthly  
24 credit reviews for troubled loans.

25 Q Is the loan to the Debtor classified as a troubled

1 loan?

2 A Yes.

3 MR. BURKS: Objection. At this point he is  
4 getting into an area of questioning where he needs a credit  
5 committee member who has got personal knowledge of the  
6 reports that he's talking about right now, Judge.

7 THE COURT: I'll overrule that objection. Go  
8 ahead.

9 BY MR. FITZMAURICE:

10 Q I think you answered the question, but there was a  
11 pending objection so --

12 THE COURT: It doesn't make a difference. I heard  
13 it. I overruled the objection. Go ahead.

14 BY MR. FITZMAURICE:

15 Q Is the bank's loan to the Debtor in default?

16 A Yes.

17 Q Was the filing of the bankruptcy case an event of  
18 default?

19 A Yes.

20 Q Are you aware of any other defaults under the loan  
21 agreement?

22 A Yes.

23 Q Can you describe any of them for me?

24 A Principally failure to pay interest.

25 Q Let me ask you about that. Did the loan documents call

1 for the payment of principal and interest during the term of  
2 the loan?

3 MR. BURKS: Objection. I don't have enough  
4 foundation to know what this gentleman had analyzed in terms  
5 of the loan documents or this account history. We are  
6 assuming he has looked at the loan documents and the account  
7 history, but he hasn't told us he has. Objection,  
8 foundation.

9 THE COURT: I will sustain the objection as to  
10 foundation. Let's lay a better foundation for the record,  
11 please. Thank you.

12 BY MR. FITZMAURICE:

13 Q Mr. Carter, are you familiar with the loan documents  
14 for the loan -- are you familiar with the loan documents  
15 relating to the bank's loan to the Debtor?

16 A Yes.

17 Q Have you reviewed those loan documents?

18 A Yes.

19 Q Have you reviewed them during the course of your  
20 employment as the relationship manager for the bank's loan  
21 to the Debtor?

22 A Yes.

23 Q Are you generally familiar with the terms of those loan  
24 documents?

25 A Yes.

1 Q Do you know when the loan was made?

2 A It was mid-May 2018.

3 Q Do you know what the original term of the loan is?

4 A So five years.

5 Q So if my math is right, mid-May 2018 plus five years is  
6 May of 2023. Does that sound right to you?

7 A Yes.

8 Q Do you have an understanding of as to whether or not by  
9 its terms the loan matured in May of 2023?

10 A Yes.

11 Q And did it in fact mature in May of 2023?

12 A Yes.

13 Q Do you know whether the loan documents call for the  
14 payment of principal and interest during the term of the  
15 loan?

16 A It was an interest-only loan.

17 Q And how was principal to be repaid under the loan  
18 documents?

19 A The loan amount was \$51,675,000.

20 Q And when was that due under the loan documents?

21 A Mid-May 2023.

22 Q So the full principal balance was due at maturity. Is  
23 that right?

24 A Yes.

25 Q And how frequently was the Debtor required to make the

1 interest-only payments?

2 A Monthly.

3 Q Did the Debtor make all those required payments?

4 A No. They stopped in mid-2020. And then there was an  
5 interest reserve that had been established at closing, for a  
6 years' worth of interest. So that was tapped for the  
7 following year until mid-2021.

8 Q And at some point was the interest reserve exhausted?

9 A Yes, mid-2021.

10 Q Do you know if the loan agreement generally required  
11 the Debtor to pay real estate taxes when they were due?

12 A Yes.

13 Q And it in fact required those taxes to be paid?

14 A Yes.

15 Q And in an event of default during the loan agreement  
16 were those taxes not to be paid?

17 A Yes.

18 Q Are you aware of whether the Debtor in fact paid real  
19 estate taxes?

20 A It did not make the 2019 tax payment and made no  
21 further tax payments since then. But it did borrow the  
22 money from a lender to pay those taxes.

23 Q Just to make sure that I understand, did the Debtor pay  
24 real estate taxes due for the year 2019?

25 A No.

1 Q Do you know whether a lien was recorded against the pt  
2 relating to those taxes that were not paid?

3 A Yes.

4 Q Is the filing of that lien an event of default under  
5 the loan agreement?

6 A Yes.

7 Q Were real estate taxes paid for the year 2020?

8 A Not by the borrower.

9 Q Was ultimately a lien recorded against the property for  
10 the tax year 2020 as a result of the failure to pay the tax  
11 -- I mean -- let me start over again.

12 As a result of the debtor's failure to pay real estate  
13 taxes in 2020, was a lien filed against the property?

14 A Yes.

15 Q Do you know if the Debtor paid real estate taxes for  
16 the year 2021?

17 A Similarly they borrowed the money from a tax lender and  
18 assigned the county tax lien to that lender.

19 Q And did the Debtor pay real estate taxes for the year  
20 2022?

21 A Same situation.

22 Q 2023?

23 A Same.

24 Q And each one of those failure to pay, are they separate  
25 events of default under the loan agreement?

1 A Yes.

2 Q After the bank exhausted the funds in the interest  
3 reserve, did it do anything to attempt to enforce its  
4 rights?

5 A Filed for foreclosure.

6 Q Was it successful in completing that foreclosure?

7 A No.

8 Q Why not?

9 A The borrower filed for a TRO, temporary restraining  
10 order.

11 Q Did the bank ultimately attempt to resolve these  
12 disputes with the borrower?

13 A We entered into a settlement agreement with the  
14 borrower.

15 Q And are you generally familiar with that settlement  
16 agreement?

17 A Yes.

18 Q I'm going to show you what's -- what was filed at ECF  
19 508-7. I think this document is -- was entered into  
20 evidence on Monday and we neglected to include it in our  
21 discussions earlier this morning, so we'll look at it now.

22 MR. BURKS: Well, excuse me. For the record, it's  
23 been entered into evidence today. I don't -- we're not  
24 going back -- the record on Monday I assume does not apply  
25 to the record here, Judge. It's been admitted into evidence



1 today.

2 MR. FITZMAURICE: And I'm not disputing -- my only  
3 point was if I had remembered, I would have asked you to  
4 stipulate to this this morning when we talked about  
5 stipulations for today. And I didn't. So that's why I'm  
6 showing it to him now.

7 MR. BURKS: I thought I stipulated to the  
8 admission of this. And if I haven't --

9 MR. FITZMAURICE: I'm happy to take that  
10 stipulation now.

11 MR. BURKS: Stipulate into evidence admission for  
12 the document what is at ECF 508-7?

13 MR. FITZMAURICE: Yes, that's right.

14 MR. BURKS: Stipulated that it's admissible,  
15 Judge, for whatever it says.

16 THE COURT: I'll admit 508-7 on stipulation.  
17 Thank you.

18 (Exhibit 508-7 admitted into evidence)

19 BY MR. FITZMAURICE:

20 Q Is this document, 508-7, is this the settlement  
21 agreement that the bank entered into with the Debtor and Mr.  
22 Choudhri and (indiscernible) Galleria LLC?

23 A Yes, I believe so.

24 Q Okay. Who is (indiscernible) Galleria LLC?

25 A That was the mezzanine lender.

1 MR. FITZMAURICE: Your Honor, my (indiscernible)  
2 have disappeared and I'm going to ask if my colleague could  
3 open up the document. I am not sure why it's not  
4 projecting.

5 THE COURT: It's the way the PDF is trying to  
6 write. But I can move it over here if you want to move it  
7 to that table. (indiscernible) plug in.

8 BY MR. FITZMAURICE:

9 Q While we're doing that, let me ask you an unrelated  
10 question while we get those organized. You know what? Mr.  
11 Akuffo is faster than I am.

12 MR. FITZMAURICE: Kwame, you can go to Section  
13 3.1A, please.

14 THE COURT: Go ahead.

15 BY MR. FITZMAURICE:

16 Q Mr. Carer, I'm showing you Section 3.1A of the  
17 settlement agreement. Do you see that in front of you?

18 A Yes.

19 Q And do you see that in the settlement agreement that as  
20 of the effective date of the settlement agreement, the  
21 borrower acknowledges the debt that was owed to NBK?

22 A Yes.

23 Q And it acknowledged that that was owed without the  
24 setoff claim, counterclaim, or deduction of any nature  
25 whatsoever?

1 A Yes.

2 Q And all of those things I just asked you about, all of  
3 those were expressly weighed by the settlement agreement.

4 Is that right?

5 A Yes.

6 Q Okay. Can you scroll down just a bit? Thank you.

7 And in the settlement agreement you see that in Section  
8 3.1B the Debtor and Mr. Choudhri and the mezzanine lender  
9 acknowledged existing events of default under the loan  
10 documents?

11 A Yes.

12 Q And that all of those events of default existed, again,  
13 without defendant's setoff -- you can read the language for  
14 yourself.

15 A Mm-hmm.

16 Q Is that right?

17 A Yes.

18 Q Okay.

19 MR. BURKS: Your Honor, at this point I object to  
20 the testimony of this witness. To the extent that he's  
21 reading from what the terms of the settlement terms are.  
22 That's best evidence rule. It says what it says.

23 To the extent that he's testifying as to the legal  
24 effect or the current legal status of this settlement  
25 agreement, he is not the qualified witness for that. There

1 is a litigation on file. He can certainly say what they  
2 intend. He can certainly say what it says. But if he's  
3 giving legal conclusions as to what the current status of  
4 these settlement terms are and the effect of the settlement  
5 agreement as we stand here today, this is a non-qualified  
6 witness. And I object --

7 THE COURT: I think all of your objections, Mr.  
8 Burks, go to weight, which I am very, very aware of. And  
9 we've covered this more than once. So I'm going to overrule  
10 your objection. Thank you.

11 BY MR. FITZMAURICE:

12 Q In the settlement agreement, did the bank agree to  
13 compromise the amount of the debt that was owed?

14 A Yes.

15 Q And did it agree to accept a discounted amount in  
16 exchange for release of the loan (indiscernible)?

17 A Yes.

18 Q What was that?

19 A \$27 million.

20 Q And was the Debtor and Mr. Choudhri's other parties,  
21 were they given a period of time within which to make that  
22 payment?

23 A 210 days.

24 Q Okay. Did they? Did they make that payment?

25 A No, they did not.

1 Q Do you know what the settlement provides happens if the  
2 payment is not made?

3 A It allows for the filing of foreclosure.

4 Q After the Debtor and Mr. Choudhri's other entities  
5 failed to make the payment, did the bank -- what did the  
6 bank do?

7 A We filed for foreclosure again.

8 Q And was that foreclosure successful?

9 A No.

10 Q Why not?

11 A The court allowed extension of the payment for 90 days  
12 provided the borrower paid \$80,000 each month toward the  
13 payment.

14 Q Did the borrower make those payments?

15 A Only two of the three payments were made.

16 Q Did the bank proceed with its foreclosure at the end of  
17 that 90-day period?

18 A It filed again, yes.

19 Q And was that foreclosure successful?

20 A No.

21 Q Why not?

22 A The borrower filed bankruptcy.

23 Q Do you know what happened in that bankruptcy case?

24 A It was eventually dismissed.

25 Q And after the dismissal of that bankruptcy case, did

1 the bank seek to exercise its rights under the loan  
2 documents?

3 A Yes.

4 Q Was it successful?

5 A No. There was a second bankruptcy filed.

6 Q Was that this one?

7 A Yes.

8 Q Have you ever heard of an entity called 2425 WL, LLC?

9 A Yes.

10 Q How have you heard about it?

11 A They filed a subordinate mortgage claim about -- it was  
12 three years after the loan originally closed.

13 MR. BURKS: Objection. Subordinate mortgage claim  
14 is a legal conclusion, Judge. I would ask that you strike  
15 that sentence.

16 THE COURT: I'll overrule that objection. Go  
17 ahead.

18 BY MR. FITZMAURICE:

19 Q Is 2425 WL's mortgage, the filing of that mortgage, is  
20 that an event of default under the loan documents?

21 A Yes.

22 Q Has the bank proposed a plan in this case?

23 A Yes.

24 Q Can you tell me generally what the plan provides for?

25 A It provides for payment of outstanding real estate

1 claims. It also includes payment of administrative fees and  
2 partial payment of trade creditors.

3 Q Dop you know what the plan provides for with respect to  
4 the Debtor's building?

5 A Yes. There's a credit bid allowed in the plan. And a  
6 deficiency is also one of the categories in the plan.

7 Q Do you know if there's going to be a sale of the  
8 Debtor's building?

9 A Well, there's an auction. That's the process by which  
10 either credit bid or third party bids take place.

11 Q Do you know when that auction is scheduled to take  
12 place?

13 A Friday.

14 Q Has the bank made a bid in connection with that  
15 auction?

16 A Yes.

17 Q And what's the amount of that bid?

18 A \$18,600,000.

19 Q Do you know if there are any other bids?

20 A My understanding is there was another bid.

21 Q Do you know what the amount of that other bid is?

22 A I believe it's --

23 MR. BURKS: Objection. This is hearsay, Judge.

24 THE WITNESS: \$20 million --

25 THE COURT: Bear with me.

1 MR. BURKS: There's no basis for him knowing what  
2 the bids are.

3 THE COURT: I'll sustain the objection. The  
4 trustee can testify as to what the bids are. Go ahead.

5 BY MR. FITZMAURICE:

6 Q Does the plan provide for the bank being paid  
7 everything it is owed?

8 A No.

9 MR. BURKS: Objection, legal conclusion. That is  
10 a legal conclusion, what is it owed.

11 THE COURT: I'll overrule that objection. Thank  
12 you.

13 BY MR. FITZMAURICE:

14 Q If there was a third party who purchases the property  
15 at auction, do you know what the plan provides as to who  
16 gets paid for that money?

17 A Payments go first to the real estate tax liens. And  
18 there is also portions that go to the administrative fees.  
19 And there is a portion that goes to the liquidation trust  
20 for the trustee. The balance then goes to our note.

21 Q You mentioned the real estate taxes. Do you know  
22 whether the plan pays those in full?

23 A Yes. Whatever is legally owed.

24 Q And you said something about administrative expenses.  
25 Do you know whether the plan pays those in full?



1 A Yes.

2 Q And does it?

3 A Yes.

4 Q Is it your understanding that the plan does not --  
5 withdrawn. Does the plan pay anything to general unsecured  
6 creditors?

7 A Well, the plan pays some to trade plans. You know,  
8 contractors who provided work on the building at the 70  
9 percent.

10 Q Does it pay those creditors cash?

11 A Yes.

12 Q Are there other unsecured creditors who --

13 A There's another group of third-party creditors that are  
14 in the class along with our deficiency -- 90 percent of our  
15 deficiency claim (indiscernible).

16 Q And so does that class of creditors receive anything  
17 under the plan?

18 A Well, they would get pro rata share of any recoveries  
19 that the trustee gets that goes into the liquidation trust.

20 Q You mentioned the word class in the context of the  
21 plan. Do you know what that is? Do you know what that  
22 means?

23 A Well, yes. There are eight classes of creditors to the  
24 borrower. And they are each identified and each have  
25 different rights, different recoveries under the plan.

1 Q Does the plan attempt to group creditors together in  
2 those classes?

3 A Yes.

4 Q Do you know as the plan proponent how the bank chose  
5 which creditors go in which class?

6 A Based on their legal status and claim status.

7 Q Are there some creditors who don't get a recovery under  
8 the plan?

9 A Yes.

10 Q And who are those?

11 A Those tend to be subordinate claims by related parties  
12 to the borrower.

13 Q Do you know if the borrower's equity holders receive  
14 anything under the plan?

15 A They don't.

16 Q Why not?

17 A There's insufficient value in the property to pay the  
18 primary secured claim of our loan.

19 Q We talked before about 2425 WL. Do you recall that?

20 A Yes.

21 Q Do you know whether the plan treats 2425 WL as having a  
22 secured claim or an unsecured claim?

23 A Well, unsecured because there's insufficient funds to  
24 cover the first mortgage, which is our mortgage.

25 Q Do you know what the plan provides for if the bank is

1 the successful bidder at the auction? And let me withdraw  
2 that question and I'll ask a different one.

3 In terms of payments to creditors, do you know what the  
4 plan provides for if the bank is the successful bidder at  
5 the auction?

6 A The bank will pay cash to the real estate tax claims,  
7 the administrative costs, and that portion to the trade  
8 creditors as well as a contribution to the liquidation  
9 trust.

10 Q And do you know approximately the amount of the cash  
11 that's required to make all of those payments?

12 A It's approximately \$3.7 million.

13 Q And has the bank committed to make those payments?

14 A Yes.

15 Q And if it turns out those required payments are a  
16 little higher, has the bank committed to make those higher  
17 payments?

18 A Yes.

19 Q Does the bank have the financial ability to make those  
20 payments?

21 A Yes.

22 Q Well, let's assume that the bank is not the successful  
23 bidder at the auction. Do you know in that instance what  
24 the plan provides by way of payments to creditors?

25 A The payments are similar. They get deducted from the

1 amount of the winning bid.

2 Q And what happens to the bank's claim in that instance?

3 A Well, after those other amounts are paid, the remainder  
4 goes to cover the bank's claim.

5 Q And similarly if those expenses are a little higher  
6 than anticipated, the bank understands it's going to take --  
7 it's going to receive a little bit less. Is that right?

8 A Yes.

9 Q And the bank has accepted that?

10 A Yes.

11 Q That's what the plan provides?

12 A Yes.

13 Q Do you know whether the plan that's on file with the  
14 court is the first draft of the plan that was prepared for  
15 the bank?

16 MR. BURKS: Objection, foundation.

17 THE COURT: I'll overrule the objection. Go  
18 ahead.

19 BY MR. FITZMAURICE:

20 A There was negotiations between the trustee and NBK's  
21 lawyers on the features of the plan.

22 MR. BURKS: Objection. Question called for  
23 hearsay. Answer is hearsay. This is the wrong witness for  
24 this, Judge.

25 THE COURT: I'll overrule the objection. Thank

1     you.

2                 MAN 1: Your Honor, may I (indiscernible)?

3                 THE COURT: Sure. I just need to change the  
4     connection over here. Hold on for one second. There you  
5     go.

6     BY MR. FITZMAURICE:

7     Q     It's difficult to see on the top of the page given  
8     several layers of blue text, but I'm showing you the  
9     document that's at ECF 501-01 titled Chapter 11 Plan of  
10    Liquidation of the Debtor by National Bank of Kuwait  
11    S.A.K.P. New York Branch.

12                MR. BURKS: Judge, for clarification and as part  
13    of what I didn't understand on the stipulations, is this the  
14    plan that's being proposed? Is this the final form of plan  
15    that we are here on today?

16                MR. FITZMAURICE: Yes, it is.

17                MR. BURKS: Thank you, Judge.

18                THE COURT: Thank you.

19                MR. FITZMAURICE: So again, Your Honor, I'm having  
20    --

21                THE COURT: (indiscernible). Do you want me to go  
22    back over to the --

23                MR. FITZMAURICE: I do, please. So 501-1.

24                MR. BAKER: And, Your Honor, it doesn't seem like  
25    that's projecting on GoToMeeting.

1 THE COURT: It's not. And I'm aware of that.

2 MR. FITZMAURICE: Your Honor, I see it here, but I  
3 don't -- just for...

4 THE COURT: I'm seeing it on my screen here, which  
5 means it should be projecting there. But for some reason --

6 MR. FITZMAURICE: I see it on the tables, I just  
7 don't see it on these back here.

8 THE COURT: I'm not sure why it's doing that.

9 MR. FITZMAURICE: May I just ask the witness? Do  
10 you see the document?

11 THE WITNESS: Yes.

12 THE COURT: It's on. For some reason it's not  
13 working. We'll see if we can fix it. Go ahead.

14 BY MR. FITZMAURICE:

15 Q Is that your signature?

16 A Yes.

17 Q And did you sign the plan of liquidation that the bank  
18 is proposing?

19 A Yes.

20 Q And is this in fact a copy of that plan?

21 A Yes.

22 MR. FITZMAURICE: Your Honor, I think we've done  
23 this. But nevertheless, move to formally admit into  
24 evidence ECF 501-01, a copy of the plan of liquidation for  
25 the Debtor submitted by National Bank of Kuwait.

1 THE COURT: All right. Any objection to the  
2 admission of 501-01, Mr. Burks?

3 MR. BURKS: I'm sorry, Judge. What?

4 THE COURT: Do you have any objection to 501-01?

5 MR. BURKS: Yes, no objection.

6 THE COURT: It's admitted. Thank you.

7 (Exhibit 501-01 admitted into evidence)

8 MR. TROOP: Excuse me, Your Honor. And I  
9 apologize for interfering. But on a procedural matter, our  
10 witnesses is our corporate rep, gets to be in here as a  
11 trustee. He gets to be in here. I didn't ask are there any  
12 witnesses in the courtroom for 2425?

13 We invoke the rule, Your Honor.

14 THE COURT: All right. So at this point in time  
15 the rule has been invoked. So you just need to go outside,  
16 sir. Maybe Ms. Conrad will give you a place to sit.

17 There are a number of people on the line. I think  
18 the only person who you've told me -- I mean, you've told me  
19 there are going to be three witnesses. And I don't think  
20 that person is on the list that we talked about. All right.  
21 So you may be excused, sir. We'll give you a place to sit.

22 Mr. Choudhri is on the phone. I'm assuming you  
23 have no objection to him listening?

24 MR. TROOP: Your Honor, I don't.

25 THE COURT: Okay.

1 MR. TROOP: I do not assert an objection. I  
2 believe he is a corporate rep.

3 THE COURT: How are you? Good to see you. Yeah,  
4 tell him to bring him up. He can come up.

5 Mr. Choudhri is waiting to be in the courtroom so  
6 I'm going to bring him up. All right, that's fine.

7 MR. TROOP: And I would suspect they would say he  
8 is the corporate rep for both of them.

9 MR. BURKS: He is the corporate representative of  
10 my client. He is the corporate representative of the  
11 debtor.

12 THE COURT: That's fine.

13 MR. TROOP: And I don't think I can invoke the  
14 rule with respect to him, Your Honor.

15 THE COURT: All right. Then, Ms. Conrad, do you  
16 want to go open a room? Or you want to get the testimony  
17 going and then you can do it?

18 CLERK: Give me one second.

19 MR. BURKS: And, Judge, do we need -- do you want  
20 for the record to name this witness as being excluded?

21 THE COURT: We'll do it when you call him as a  
22 rebuttal witness. Thank you.

23 MR. BURKS: Yes, Judge.

24 THE COURT: Thank you. All right.

25 MR. BURKS: Excuse me, Judge. Is now an okay time



1 for me to take a restroom break? I am struggling with a  
2 stomach issue.

3 THE COURT: I typically break every two hours. I  
4 was planning a break at 11:00. But, Mr. Burks, if you need  
5 to go to the bathroom, I don't want to stop you from doing  
6 that.

7 MR. BURKS: That's not the way I would have put it  
8 on the record, but thank you for putting it that way.

9 THE COURT: That's basically what you said. All  
10 right, but we'll stand down. We'll stand down for ten  
11 minutes. This will be our 11:00 break. Thank you.

12 CLERK: All rise.

13 (Recess)

14 CLERK: All rise.

15 THE COURT: Please be seated.

16 MR. FITZMAURICE: Your Honor, can Mr. Burks take  
17 one other thing to the witness stand?

18 THE COURT: Mr. Carter? Sure. No problem.

19 MR. FITZMAURICE: And Mr. Burks can do whatever he  
20 wants.

21 MR. BURKS: You're calling me?

22 MR. FITZMAURICE: No, no.

23 THE COURT: I did exactly the same thing, so my  
24 water's here as well.

25 CLERK: It's okay.

1 THE COURT: Again. All right, Mr. Carter. I'll  
2 remind you that you're still under oath. Go ahead, sir.

3 MR. FITZMAURICE: Thank you, Your Honor.

4 BY MR. FITZMAURICE:

5 Q Mr. Carter, what kind of building is the property owned  
6 by the debtor?

7 A It's an office building.

8 Q Thank you. Are you aware of whether the building has  
9 tenants?

10 A I'm not aware of the actual situation.

11 Q Well, whether or not the building has any tenants, do  
12 you know what the plan does with respect to any leases those  
13 tenants have?

14 A It vacates all the leases so we can then review after  
15 and decide whether or not we want them, and any third-party  
16 bidder can decide which ones they would like to retain.

17 Q You testified earlier concerning litigation that was  
18 brought by the debtor. Do you know if the plan does  
19 anything with respect to that litigation?

20 A Litigation by the?

21 Q By the debtor.

22 A The debtor is released.

23 Q Do you know whether the -- under the plan the bank  
24 receives a release of claims by the estate?

25 A Yes. It does.

1 Q And if the bank did not receive that release, would it  
2 fund the amounts it's paying under the plan?

3 A No.

4 Q Can you remind me again what the banks -- what  
5 approximate amount the bank is owed as of the filing of the  
6 bankruptcy case?

7 A I believe it's around 61 or 2 million.

8 Q And in connection with the auction, the bank made a  
9 bid. The bank made a credit bid. Is that correct?

10 A Yes.

11 Q And what was the amount of that credit bid?

12 A 18 million 6.

13 Q And if the property sold to the bank at that credit bid  
14 in a foreclosure, would there be any money that was left for  
15 unsecured creditors?

16 A No.

17 Q But the bank is paying unsecured creditors something  
18 under the plan, right?

19 A Yes.

20 Q In your view, is the bank making those payments  
21 essentially in exchange for the release and getting of  
22 estate claims?

23 A No, we're making those payments because we think it's  
24 fair to those parties.

25 Q Is the bank asking for the estate to pay any legal fees

1 the bank has incurred in connection with the bankruptcy  
2 case?

3 A No.

4 Q Is the bank asking the estate to pay any expenses the  
5 bank has incurred in connection with the bankruptcy case?

6 A No.

7 Q I want to go back to the settlement agreement for a  
8 moment, 508-7.

9 THE COURT: Do you have a copy of the exhibit?

10 MR. FITZMAURICE: It's on the screen.

11 THE COURT: Let me try something. I'm going to --  
12 I'm just going to see if I can get the screens to come back  
13 so it's on the big ones. I'm sorry. I'm not able to do  
14 that. Go ahead.

15 BY MR. FITZMAURICE:

16 Q Under the settlement agreement, in general terms, the  
17 bank agreed to accept less than it was owed. Is that right?

18 A Yes.

19 Q And does the settlement agreement provide what happens  
20 concerning the amount owed to the bank by the debtor if the  
21 debtor fails to perform under the settlement agreement?

22 A Could you ask that again?

23 Q I'll try to ask it better. Do you know if the  
24 settlement agreement says what happens to the amount owed to  
25 the bank if the Choudhri parties fail to make the payment

1 required under the settlement agreement?

2 A They acknowledge the original full amount due.

3 Q And in that instance, is -- do you know if the  
4 settlement agreement allows the bank to exercise all of its  
5 rights under the loan documents?

6 A Yes.

7 Q And to collect the full amount that's owed?

8 A Yes.

9 MR. FITZMAURICE: Excuse me one moment, Your  
10 Honor.

11 THE COURT: All right. Go ahead.

12 MR. FITZMAURICE: Your Honor, I think we've  
13 addressed this issue, but just for clarity, I move for  
14 admission of document at ECF 508-7, which is the settlement  
15 agreement. I think we've done it, but I just want to...

16 MR. BURKS: So for clarification, I --

17 THE COURT: It was admitted. I admitted it back  
18 originally.

19 MR. BURKS: Is it that? Is it 508-7 or do we have  
20 now two copies of it?

21 MR. FITZMAURICE: No, it's -- 508-7 is the -- is  
22 what I had showed him earlier and that was the version that  
23 we referenced earlier. So it's the same one.

24 THE COURT: It's on the record. It's been  
25 admitted. I'm pulling it up to make sure it is 508-7.

1 Thank you.

2 BY MR. FITZMAURICE:

3 Q Mr. Carter, do you know whether the bank voted in  
4 connection with the plan?

5 A Yes.

6 Q Did the bank vote in favor or against?

7 A In favor.

8 Q Do you know how many claims the bank had?

9 A I'm not sure I understand the question.

10 Q Does the bank have one claim in this case or more than  
11 one?

12 A Oh, you mean in terms of the categories. Yes, it has  
13 three.

14 Q However many claims it had that are entitled to vote,  
15 did it vote all of those claims the same way?

16 A No, I believe just two of the three are voting.

17 Q So two of the three claims are voting claims?

18 A Yes.

19 Q And were those two claims voted in favor or against?

20 A In favor.

21 MR. FITZMAURICE: Your Honor, I know that we just  
22 came back. May I have a short time to confer?

23 THE COURT: Yeah. Take your time.

24 MR. FITZMAURICE: Thank you.

25 MR. TROOP: We're going to step away from the mic,

1       aren't we?

2               THE COURT: That's probably a wise idea.

3               MR. FITZMAURICE: Your Honor, I'm happy to report  
4       this is one instance where a short break hopefully saves  
5       some time. Pass the witness.

6               THE COURT: All right. Mr. Baker, you made the  
7       first appearance, but I realize you may not want to go  
8       first.

9               MR. BAKER: I'd like Mr. Burks to go first.

10              THE COURT: Then I'll call on Mr. Burks for cross.

11              MR. BURKS: Thank you, Judge.

12              THE COURT: Mr. Burks, are you going to project?  
13       Where are you going to project from?

14              MR. BURKS: I'm going to project from Mr. Baker.

15              THE COURT: All right. Then I'll go to the right  
16       table. Mr. Burks -- Baker can connect at his leisure.

17              MR. BAKER: Fixed it.

18              MR. BURKS: He did it.

19              MR. BAKER: I'm multi-talented, Mr. Burks.

20              MR. BURKS: Who am I to disagree, Your Honor?

21                      CROSS-EXAMINATION OF MICHAEL CARTER

22       BY MR. BURKS:

23       Q       Hi, Mr. Carter. How are you, sir?

24       A       Good. How are you?

25       Q       I'm doing all right, thanks. Feeling a little better,

1 thanks. All right. So let's go over the provisions of the  
2 plan, and let's start with what you gave your testimony on,  
3 the note in the -- the note. And you testified what exactly  
4 your opinion was as to the terms of the note, correct? Did  
5 the settlement agreement modify the terms of that original  
6 note?

7 MR. FITZMAURICE: Objection, Your Honor. Calls  
8 for a legal conclusion.

9 MR. BURKS: This door is really wide open at this  
10 point.

11 THE COURT: I'll give you a little bit of leeway.  
12 I think the agreement speaks for itself, Mr. Burks. What he  
13 thinks may or may not have any relevance to me, but if you  
14 want to ask the questions and put it on the record, I'm more  
15 than happy to do that.

16 MR. BURKS: Thank you, Judge. I made the same  
17 objections, frankly.

18 BY MR. BURKS:

19 Q In your opinion, did the settlement agreement modify  
20 the original terms of the note?

21 MR. FITZMAURICE: So objection, Your Honor.  
22 Question calls for speculation and the witness' opinion. He  
23 is not here as an opinion witness, as an expert. He's here  
24 to offer factual testimony.

25 MR. BURKS: He gets to answer that.



1 THE COURT: I'll let him answer that question.

2 Thank you. Go ahead.

3 BY MR. BURKS:

4 A Could you say that again?

5 THE COURT: Let me be clear. Mr. Burks may be  
6 asking you questions that you do not know, and if you do not  
7 know --

8 THE WITNESS: Mm hm.

9 THE COURT: -- the correct responses, you don't  
10 know, okay? But if you do know or you have an opinion, I'd  
11 like to hear it. Go ahead.

12 MR. BURKS: Thank you, Judge.

13 BY MR. BURKS:

14 Q You testified as to the terms of the note and whether  
15 or not the note was in default and whether or not the  
16 borrower had performed. Do you remember that testimony?

17 A Yes.

18 Q All right. Was your -- and you testified that there  
19 was a settlement agreement, correct?

20 A Yes.

21 Q You testified that you understood and you were familiar  
22 with the terms of that settlement agreement, correct?

23 A Yes.

24 Q All right. Did the settlement agreement modify or  
25 change any terms of the original note?

1 A Well, because it's a settlement, it made some changes  
2 to the amount that was due.

3 Q Did it cure all the defaults up to and effective as of  
4 August 22, 2022?

5 MR. FITZMAURICE: Objection, Your Honor. Calls  
6 for a legal conclusion. And also, the document and its  
7 terms speak for themselves.

8 MR. BURKS: Let's see what he knows, Your Honor.  
9 You gave him an awful lot of leeway on direct. I'm  
10 certainly within the scope of direct here.

11 THE COURT: I'll let -- again, and I'll say it  
12 again for the record, the document says that it says, Mr.  
13 Burks, but I don't have any objection to you asking that  
14 question.

15 MR. BURKS: I'm eventually going to -- the only --

16 THE COURT: The question. You don't need to tell  
17 me what you're going to do. I'm happy to hear the  
18 testimony. Go ahead.

19 MR. BURKS: You've ruled. Thank you, Judge.

20 BY MR. BURKS:

21 Q Do you need the question again, sir?

22 A Could you ask it again?

23 Q Sure. By the terms of the confidential settlement  
24 agreement, did all the defaults leading up to the settlement  
25 agreement date of August 22, 2022, were those cured? Were

1 those brought current by the settlement agreement?

2 A Yes. The borrower properly behaved under the  
3 settlement agreement and those claims were waived.

4 Q All right. So let's go to what the settlement  
5 agreement required. The first requirement was a payment of  
6 --

7 MR. BURKS: Scroll down, please.

8 BY MR. BURKS:

9 Q -- \$800,000. And I -- I'm telling you that so we can  
10 get to the agreement, sir.

11 MR. BAKER: Where is it?

12 MR. BURKS: Until you see (indiscernible). Keep  
13 going down.

14 BY MR. BURKS:

15 Q So the settlement payment of \$801 -- 509 --  
16 \$801,509.42, was that received by NBK?

17 MR. FITZMAURICE: So objection, Your Honor, to the  
18 extent that counsel described that as the settlement payment  
19 and mischaracterizes the evidence.

20 MR. BURKS: Actually, I said "was the payment of"  
21 in terms of the settlement payment. We all see what the  
22 settlement payments are. I'm asking was the 801,509.42  
23 received. That's a simple question.

24 BY MR. BURKS:

25 A Yes.

1 Q The Judge has to rule on the objection. One moment.

2 THE COURT: What? Was there an objection? I  
3 didn't hear it.

4 MR. BURKS: Okay.

5 BY MR. BURKS:

6 Q So the 801,509.42 was received by the bank, correct?

7 A Yes.

8 Q All right. The settlement payments also include...

9 MR. BURKS: (indiscernible). Wherever. Go back  
10 up. Go ahead and put the three payments of \$80,000.

11 THE COURT: I think that's part of the state court  
12 litigation.

13 MR. BURKS: Okay. Freeze there.

14 BY MR. BURKS:

15 Q Were any other payments due to the bank under this  
16 settlement agreement?

17 A There was a total settlement of 27 million.

18 Q And when was that due?

19 A That was due within 210 days.

20 Q Did the bank receive 27 million with the  
21 (indiscernible) balance due within 210 days?

22 A No.

23 Q So what did the bank do? Did the bank extend the time  
24 or make any sort of agreement?

25 A We proceeded to file for foreclosure.

1 Q Did you make an agreement to extend the time to receive  
2 the money?

3 A The borrower made a request to the court to extend it.  
4 And there was an agreement to extend it for 90 days with a  
5 payment of \$80,000 a month.

6 Q Mm hm.

7 A Of which only two of the three months were paid.

8 Q So was the first month paid?

9 A Yes.

10 Q Was the second month paid?

11 A Yes.

12 Q Was the third month paid?

13 A No.

14 Q At what point did the bank take the position that the  
15 borrower was in default on the settlement agreement? On  
16 what date or what time?

17 A When they failed to make the third payment.

18 Q And what date was that?

19 A I don't remember specifically.

20 Q All right. Are you aware that there was a lawsuit  
21 filed? The lawsuit's been admitted into evidence, not for  
22 voracity of the claims, but for the fact that the lawsuit  
23 exists and the claims exist. Are you aware of that lawsuit?

24 A No.

25 Q So you're not aware that NBK is a defendant in a

1 lawsuit regarding the enforceability and terms of this  
2 settlement agreement.

3 MR. FITZMAURICE: So objection, Your Honor. Lacks  
4 foundation. And if there's a lawsuit, we can look at it.

5 THE COURT: Yeah, I'll sustain the objection.

6 MR. BURKS: Well, I'm asking him if he's aware.  
7 An objection's sustained. I'll reask it.

8 BY MR. BURKS:

9 Q When you stated that the debtor or the borrower was in  
10 default of the settlement agreement, were you under the --  
11 were you making the assumption that the bank had not first  
12 been in breach of the settlement agreement?

13 A Yes.

14 Q If I told you, and it's purely hypothetical, but if I  
15 told you as a hypothetical in your experience as a banker,  
16 in your experience as -- dealing with loans that if there  
17 was an agreement that the bank breached first, would you  
18 take the position that the borrower was still in default of  
19 that agreement?

20 MR. FITZMAURICE: Objection, Your Honor. Calls  
21 for speculation.

22 THE COURT: I'll sustain the objection.

23 BY MR. BURKS:

24 Q The tax liens that the bank claims are going to be paid  
25 to the bank by -- in terms of the plan. Is that correct?

1 MR. FITZMAURICE: Objection, Your Honor. The plan  
2 speaks for itself.

3 THE COURT: I'll sustain the objection as to what  
4 the plan says. And it's in evidence. If you want to show  
5 him and have him read it you can.

6 MR. BURKS: Yes, Your Honor.

7 BY MR. BURKS:

8 Q Does the settlement agreement affect the rights of the  
9 borrower or NBK with respect to the tax liens?

10 MR. FITZMAURICE: Objection, Your Honor. Calls  
11 for a legal conclusion.

12 MR. BURKS: Your Honor -- response, Your Honor.  
13 This door is so wide open regarding what he understands the  
14 effects of the settlement agreement --

15 MR. FITZMAURICE: If he doesn't know, he doesn't  
16 know.

17 THE COURT: Here's my problem. I struggle for the  
18 relevance of what he thinks because what he thinks really  
19 isn't that important to me. It's what I think and how I  
20 rule. It's in evidence. If you want to make an argument  
21 that it does some particular thing for the debtor, that's  
22 fine. But I don't really care what he thinks. How's it  
23 relevant?

24 MR. BURKS: He's declaring the loan in default and  
25 he's testifying as to the validity of the claim, Judge.

1 THE COURT: And so your point is what? You're  
2 going to cross-examine him on that issue?

3 MR. BURKS: And I want -- I think it goes to  
4 weight in the documents.

5 THE COURT: Okay. Thank you.

6 BY MR. BURKS:

7 Q I want to talk about classification, which is something  
8 you talked about. Do you remember talking to your attorney  
9 about classification of claims? Sort of the grouping. You  
10 described it, I believe, as the grouping of the claims.

11 A Yes.

12 Q You said that 2425 WL filed a second lien on the  
13 property. Is that correct?

14 A Yes.

15 Q You stated that WL is getting zero under the plan. Is  
16 that correct?

17 A Yes.

18 Q And why is WL getting zero under the plan?

19 A They have a subordinated claim and mine is insufficient  
20 to cover the first claim.

21 Q Why is the plan -- if that is true if -- after the  
22 auction if that is true, why does the plan not provide for a  
23 general unsecured claim on WL's second -- 2425 WL's second  
24 lien? Why does it not provide for that as an unsecured  
25 claim?



1 A They are a Category 6.

2 Q So it's because of the way they were classified. Let  
3 me ask it differently.

4 A Okay.

5 Q Is the unsecured portion of 2425 WL's claim in the same  
6 class as the under-secured or unsecured portion of NBK's  
7 lien?

8 A No.

9 Q But NBK's lien is mixed with some other unsecured  
10 creditors, isn't it?

11 A It's mixed with some third-party claimants.

12 Q Okay. Let's assume under your math, you told your  
13 attorney that the value -- you believe the value is  
14 somewhere around 60 -- or excuse me, you said today that the  
15 amount due on the note was about 60, 61. Correct me if I'm  
16 mischaracterizing. Is that what you said?

17 A Say that again? That the...

18 Q What is the current amount due on the first lien note  
19 of NBK?

20 A It's a little over 60 million.

21 Q All right. Let's say -- and you said that the credit  
22 bid was for 18 what?

23 A Six.

24 Q All right. So let's say you have a 41,000 --  
25 \$41,400,000 unsecured claim, okay?

1 A Yes.

2 Q That's mixed in with -- in the plan, that's classified  
3 and mixed in with unsecured -- of an unsecured claim in the  
4 total amount of what?

5 A I don't know the total amount of those other unsecured  
6 claims.

7 Q Small, deminimis compared to NBK's claim?

8 A Yes, they are small.

9 Q What would happen if you took the \$26 million unsecured  
10 claim that you believe that exists of WL on its second lien  
11 and mixed it in with NBK's lien? What would happen?

12 MR. FITZMAURICE: Objection, Your Honor. Vague as  
13 to what would happen. Also relevance if -- to the current  
14 plan and whether it would be the confirmation standards,  
15 whether there was some other set of facts that doesn't  
16 exist.

17 THE COURT: I think the question is vague. Tell  
18 me how it affects me confirming this plan or not.

19 MR. BURKS: Classification -- unfair  
20 discrimination classification, Judge.

21 THE COURT: I think you can ask that question a  
22 different way rather than the way you're asking it. So  
23 rephrase your question please.

24 BY MR. BURKS:

25 Q Would a \$26 million claim classified in the same group

1 as NBK's probable approximately \$43 million claim, would  
2 that dilute substantially the distribution on that unsecured  
3 claim?

4 MR. FITZMAURICE: Objection. Vague as to  
5 "dilute". Vague as to "that claim".

6 THE COURT: I'll overrule the objection. You can  
7 answer the question.

8 BY MR. BURKS:

9 A Well, all of the -- all of that junior subordinate  
10 claim is subordinate to NBK's claim.

11 Q So your position is, is that the unsecured claim  
12 portion of the junior lien is subordinate to the unsecured  
13 portion of the first lien. Is that what you're saying?

14 A Yes.

15 Q All right. Let's talk about leases for a minute. What  
16 happens to the current tenants' leases? You said they were  
17 being rejected, correct?

18 A Yes.

19 Q And where -- how much are the rejection lease claims  
20 being paid?

21 A They don't get a payment.

22 MR. FITZMAURICE: Objection, Your Honor. The plan  
23 speaks for itself as to the treatment that the creditors  
24 receive.

25 MR. BURKS: I can't tell.

1 THE COURT: If he knows he can testify to it. If  
2 he doesn't know, he'll tell you he doesn't know.

3 BY MR. BURKS:

4 A The tenants don't get a payment.

5 Q They don't get one dime, do they?

6 A No.

7 Q All right. Trade creditors, are those trade creditors,  
8 do they hold liens on the property?

9 A They are various contractors who were doing work on the  
10 property that haven't been paid by the borrower.

11 Q My question is for purposes of this plan. Do they hold  
12 liens?

13 A I don't know.

14 Q And they're getting paid .70 cents on the dollar,  
15 correct?

16 A Yes.

17 Q And how much are general unsecured creditors being  
18 paid?

19 A The general unsecured ones get the pro rata share of  
20 all the claims in that category.

21 Q And is the approximately \$40 million claim of NBK in  
22 that same class?

23 A Yeah, it's 90 percent of it.

24 Q So the general unsecured claims are mixed in with NBK's  
25 claim, correct?

1 MR. FITZMAURICE: Objection, Your Honor.

2 Mischaracterizes the plan.

3 MR. BURKS: Oh, I doubt it. It's a --

4 THE COURT: Well, let's show him the plan then.

5 MR. BURKS: All right. Let's have the plan.

6 Paragraph 12. Page 12, Paragraph G, please.

7 BY MR. BURKS:

8 Q Sir, you recognize this as the plan you've testified  
9 you're familiar with? Or do you need the first page of it?

10 A Yes.

11 Q That is the plan that you're testifying about that  
12 you're familiar with?

13 A Yes.

14 Q To you, what does -- on Page 12, what does Paragraph G  
15 Classified B of the general unsecured claims -- what does it  
16 mean when it says, "Pro rata distribution of general  
17 unsecured claims, provided, however, NBK should be deemed to  
18 have another general unsecured claim equal to 90 percent of  
19 its deficiency"? What does that mean to you?

20 A Pro rata means that whatever is recovered through the  
21 liquidation trust, it would then be divided up based on the  
22 size of the claim. But NBK's claim is reduced to 90 percent  
23 of its unpaid claim at that point.

24 Q So the other general unsecured claims are mixed in with  
25 that 90 percent.

1 A Yes.

2 Q All right.

3 A They're at 100 percent.

4 MR. TROOP: Objection, Your Honor. That  
5 mischaracterizes the plan. The plan doesn't say general  
6 unsecured claims. It says --

7 MR. CHOUDHRI: Objection. One --

8 MR. TROOP: It says other. Other general  
9 unsecured claims. And there's only so much misleading that  
10 counsel ought to be able to do through his testimony because  
11 the plan's pretty clear. 5(a) is trade creditors, trade  
12 general unsecured creditors.

13 MR. CHOUDHRI: Objection.

14 MR. TROOP: There's a definition of other general  
15 unsecured creditors, and then there's Class 6.

16 THE COURT: Okay. And so let's be clear to  
17 everyone. I can read the plan. I could take what this  
18 witness says in light of what the plan says, and it goes  
19 greatly to weight, okay? So Mr. Burks' questions, I don't  
20 see any problems with them. You may have some disagreement  
21 with the form of the question, but I take that answer in  
22 context of the plan that I'm going to review, and it doesn't  
23 bother me in the least. Mr. Choudhri, you may sit down.  
24 You don't get to object. Go ahead.

25 BY MR. BURKS:

1 Q Paragraph B, treatment of classes of claims in  
2 interest, Paragraph B(g), the second -- just to be clear,  
3 the second lien claim of WL to the extent there's no value  
4 to that lien, it is excluded from B(g), correct?

5 MR. FITZMAURICE: Objection, Your Honor. Is  
6 counsel asking about Classified B in Subsection G of this  
7 section?

8 MR. BURKS: Yes.

9 THE COURT: You can answer the question, sir.

10 THE WITNESS: Okay.

11 BY MR. BURKS:

12 A Could you repeat that question?

13 Q The (indiscernible) -- the second lien claim of WL is  
14 excluded from Page 12, Paragraph B(g).

15 MR. FITZMAURICE: Objection, Your Honor. There is  
16 no Paragraph B(g). Misleading.

17 MR. BURKS: Well, (indiscernible) claims is  
18 Capital B and then little (g) is Class B5. I'm looking at  
19 it. The witness is looking at it. We're all looking at it.

20 THE COURT: Go ahead. Ask the question and answer  
21 it. I mean, I'm looking at the same thing and I'm taking it  
22 in light of what the plan says. And I -- Mr. Burks, I  
23 wonder why -- the questions you're asking seem to be  
24 undisputed facts, okay? I mean, I'm aware of what the plan  
25 says. I'm aware of the claim classification. I'm really

1 worried about disputed facts. This appears not to be a  
2 disputed fact as to what's in the claims and how they're  
3 being paid.

4 MR. BURKS: I'll answer the question, Judge. This  
5 witness said that this is a fair, equitable, and permissible  
6 plan.

7 THE COURT: Well, why don't you ask him questions  
8 about whether it's fair and equitable rather than how claims  
9 are classified? Because I can tell how claims are  
10 classified. It's in the plan, okay? If you have an  
11 argument to make, you have evidence that relates to fair and  
12 equitable, how the claims are classified perhaps, but I know  
13 how they're classified. Go ahead.

14 MR. BURKS: All right. I'm going to ask him one  
15 more question about classification and then I'll move on.  
16 May I, Judge?

17 THE COURT: Yeah, you can.

18 MR. BURKS: Thank you. Turn to trade creditor.  
19 (indiscernible).

20 MR. BAKER: In the (indiscernible)?

21 MR. BURKS: Mm hm. Go backwards.

22 MR. BAKER: Wait. Do you want me to go back to  
23 definitions?

24 MR. BURKS: No, I want you to go -- I'd like you  
25 to go, Mr. Baker, to trade creditors.



1 MR. BAKER: Which section?

2 MR. BURKS: It's what I'm looking for, treatment  
3 of trade creditors.

4 MR. BAKER: I'm almost there.

5 MR. BURKS: (indiscernible). I'm looking for it.  
6 Scroll up and look for it (indiscernible). It's on the same  
7 page.

8 BY MR. BURKS:

9 Q The plan provides, as the judge has said -- and we can  
10 all read it, the plan provides for trade creditors to  
11 receive 70 percent of their allowed claims, correct?

12 A Yes.

13 Q Under any test, do you believe that the creditors, the  
14 other general unsecured claimants in Subclass G will receive  
15 70 percent of their allowed claims?

16 MR. FITZMAURICE: Objection, Your Honor.  
17 Mischaracterizes the document. There is no Subclass G.  
18 It's the --

19 MR. BURKS: Paragraphs -- Paragraph G, Class 5B of  
20 the general unsecured claims.

21 BY MR. BURKS:

22 Q Do you believe that there is any way that they will  
23 receive .70 cents on the dollar?

24 MR. FITZMAURICE: Objection, Your Honor. Calls --  
25 the question is misleading. Counsel is making the legal

1 argument about whether that's required in order for the plan  
2 to be fair and equitable.

3 THE COURT: I think he's asking a question that I  
4 already know the answer, but I'll ask you to answer the  
5 question, sir. And then I may ask the questions which I  
6 think you should be asking because I don't think you're  
7 getting there. But go ahead. Answer the question.

8 BY MR. BURKS:

9 A It's unlikely.

10 Q All right.

11 MR. BURKS: Am I deferring to you now or --

12 THE COURT: You are.

13 MR. BURKS: -- am I proceeding?

14 THE COURT: So if we look at the plan, Mr. Carter,  
15 there are two general unsecured classifications, Class A and  
16 Class 5B. And what I'd like to know is the rationale of why  
17 those claims are split into two separate classes of claims.  
18 If you know, tell me what the rationale is.

19 THE WITNESS: The general rationale is that the 5A  
20 category was third-party contractors that were doing work on  
21 the building and didn't get paid by the borrower at the time  
22 of the bankruptcy filing. While the 5B is entities that  
23 were doing work for the borrower but not the building.

24 THE COURT: Okay. So you're basically --

25 THE WITNESS: Essentially most of them were law

1 firms that were doing claim work on behalf of the borrower.

2 THE COURT: All right. So your rationale is --

3 THE WITNESS: It goes in a different category.

4 THE COURT: And in your mind, that separate  
5 classification is fair and equitable.

6 THE WITNESS: Yes.

7 THE COURT: Okay. Let me ask about Class 7, which  
8 is the subordinated claims. They're not getting paid  
9 anything. What's the rationale for not paying the  
10 subordinated claims anything?

11 THE WITNESS: Well, Class 6, 7, and 8 are all  
12 related entities to the borrower.

13 THE COURT: So in effect, you're saying their  
14 insider claims, they shouldn't be paid.

15 THE WITNESS: Not that they shouldn't be paid, but  
16 there are insufficient funds or value in the property to pay  
17 them.

18 THE COURT: Okay. Go ahead, Mr. Burks.

19 MR. BURKS: Thank you, Judge. I forget sometimes  
20 you were a debtors' attorney.

21 BY MR. BURKS:

22 Q Sir, you stated that there would be -- you stated that  
23 the bank anticipates paying \$3.7 million cash into the plan,  
24 correct?

25 A Yes.

1 Q And you stated that you were -- if you did not receive  
2 the release, if NBK did not receive the release in the plan  
3 -- that's provided in the plan, did I understand you  
4 correctly to say that you would not pay the -- the bank  
5 would not pay the \$3.7 million?

6 A Some of that 3.7 is administrative fees that would need  
7 to be paid anyway. But some parts of it are for trade  
8 creditors, etcetera, that would be voluntary.

9 Q Well, I don't think I asked the question clearly. If  
10 the --

11 A Yeah.

12 Q If the judge rules that he cannot grant a release in  
13 this plan -- and I'm not saying he will or won't, but if the  
14 judge rules he can't grant NBK the release that's in the  
15 plan, will NBK pay the \$3.7 million if the plan's otherwise  
16 confirmed?

17 MR. FITZMAURICE: Objection, Your Honor. Calls  
18 for speculation.

19 THE COURT: I'll sustain that objection.

20 BY MR. BURKS:

21 Q In the plan, is the \$3.7 million payment tied to the  
22 release?

23 MR. FITZMAURICE: Objection, Your Honor. The plan  
24 speaks for itself.

25 MR. BURKS: No, he --

1 THE COURT: I'll sustain the objection.

2 MR. BURKS: All right.

3 BY MR. BURKS:

4 Q Have you or -- have you made a determination what is  
5 the value against NBK of all the litigation that's pending  
6 that you're aware of? Have you made a valuation of that?

7 MR. FITZMAURICE: Objection. The witness  
8 personally?

9 MR. BURKS: That's where I'm going as my initial  
10 question, yes.

11 MR. FITZMAURICE: So then I'll object to the  
12 extent the witness -- the question would ask the witness to  
13 reveal the contents of the attorney-client communications.  
14 I instruct the witness not to do so.

15 THE COURT: I'll sustain the objection. I think  
16 that question's better directed to the trustee anyway.

17 BY MR. BURKS:

18 Q Has NBK's loan committee -- did they approve the  
19 payment of 3.7? Did they approve the payment of \$3.7  
20 million through the plan if it's confirmed?

21 A Yes.

22 Q Did they do so on the expectation of the full release  
23 from litigation?

24 A Yes.

25 Q In doing so, did they assign a value to the litigation

1 that they're being released from?

2 MR. FITZMAURICE: Objection, Your Honor. Calls  
3 for speculation and again (indiscernible).

4 THE COURT: I'll sustain the objection.

5 BY MR. BURKS:

6 Q Is this plan being confirmed or proposed with the bank  
7 assigning no valuation to the litigation (indiscernible)?

8 MR. FITZMAURICE: Objection, Your Honor. It's the  
9 version of the same question that we've been at here a  
10 little while.

11 THE COURT: And I sustained the objection for the  
12 first time, and I'll sustain it again. Thank you.

13 MR. BURKS: Yes, Your Honor. So your ruling is  
14 that I don't get to know what the value -- the bank's value  
15 of the litigation is?

16 THE COURT: I just said I think that question is  
17 better asked of the trustee. He's probably in a much better  
18 position to make an evaluation of what it's worth and not  
19 worth.

20 MR. BURKS: Yes, Your Honor. I understand. I'm  
21 going to ask the Court to take judicial notice that in the  
22 case the proponent in this plan and the trustee is not.

23 THE COURT: That's fine.

24 MR. BURKS: Thank you, Judge.

25 THE COURT: Thank you.

1 MR. BURKS: May I have a moment with my notes,  
2 Judge?

3 THE COURT: Certainly.

4 MR. BURKS: Thank you. Thank you, Your Honor.

5 MAN 1: May I borrow a tissue from the court?

6 THE COURT: Yeah, sure.

7 MAN 1: And (indiscernible) I will not return it.

8 MR. BURKS: Mr. Baker, will you turn to Page 11 of  
9 the plan, please? May I proceed?

10 MR. FITZMAURICE: Oh, yes. Thank you, yes.

11 BY MR. BURKS:

12 Q Mr. Carter, will you look on Page 11 of the plan?  
13 There's a summary of classification. I want to know what  
14 other secured claims in Class 1 are. Who are they, please?

15 A Class 1 is the outstanding tax claims.

16 Q Are you aware of proof of claim at ECF Docket 496-1  
17 filed by Arin-Air Inc.?

18 A No.

19 Q Never heard of it?

20 A No.

21 Q Okay. Do you know whether or not the claim of Arin-Air  
22 Inc. is being paid in the plan?

23 A I don't know what that claim is.

24 Q Okay. Let's put it up on the screen and see. Docket  
25 ECF 496-1.

1 MR. BURKS: Mr. Baker, will you slowly scroll  
2 down?

3 BY MR. BURKS:

4 Q And Mr. Carter, I'm doing this so -- I'm trying to see  
5 if you can identify this claim. It purports to be from  
6 Arin-Air Inc. and it purports to have a mechanic  
7 (indiscernible) on it.

8 MR. BURKS: All the way down (indiscernible).

9 BY MR. BURKS:

10 Q Have you seen this proof of claim, Mr. Carter, before?

11 A I don't recall this one.

12 Q It purports to be, certainly on its face --

13 MR. BURKS: Go to Page 1, please.

14 BY MR. BURKS:

15 Q -- a secured claim. Isn't that the definition of Class  
16 1, other secured claims?

17 MR. FITZMAURICE: Objection, Your Honor. The plan  
18 speaks for itself in how it defines numbers of the classes.

19 THE COURT: I'll sustain the objection. Thank  
20 you.

21 BY MR. BURKS:

22 Q Do you know what class Arin-Air Inc. is included in?

23 A Given that it appears to be a construction company,  
24 it's like in the 5A group. If it's there. I don't know  
25 that one particularly.



1 Q And which group is that?

2 A That's the one that gets 70 percent.

3 Q The date of the lien purports to be 8/11/2023. Do you  
4 recall the date of the second lien filed by 2425 WL?

5 MR. FITZMAURICE: So objection, Your Honor. Calls  
6 for a legal conclusion as to whether or not the -- if there  
7 is a lien that is actually valid and perfected as of that  
8 date.

9 THE COURT: Ask the question again, Mr. Burks.

10 BY MR. BURKS:

11 Q We see that Arin-Air Inc.'s lien affidavit by order or  
12 not was filed on 8/11/2023. Do you recall when the lien of  
13 2425 WL, valid or not, do you recall when that was filed?

14 MR. FITZMAURICE: So objection, Your Honor. Lacks  
15 foundation as to the date of the filing. I don't know if  
16 the witness knows what any of the markings on this document  
17 mean.

18 MR. BURKS: I asked him when it was filed.

19 THE COURT: I'll overrule the objection. You can  
20 answer the question. If you recall.

21 THE WITNESS: I don't recall it --

22 THE COURT: If you don't recall --

23 THE WITNESS: -- when it was filed.

24 BY MR. BURKS:

25 Q All right, sir. Well, I have a question about that,

1 and I'm going to pull up the proof of claim, which has been  
2 previously admitted into evidence so you can take a look at  
3 it. (indiscernible) one moment, sir. I understand that you  
4 don't remember all the claims.

5 MR. BURKS: Is this you (indiscernible)? Let's do  
6 some work on it.

7 MR. BAKER: FR claim?

8 MR. BURKS: Of the (indiscernible).

9 MR. BAKER: Yeah. I would have to look there.

10 MR. BURKS: (indiscernible).

11 MR. BAKER: He's there. Go up. Keep going up.

12 MR. BURKS: And on a slightly lighter note, I do  
13 miss the days of paper a little bit.

14 MR. BAKER: 12. No, I'm sorry. (indiscernible).  
15 Here it is.

16 MR. BURKS: Yeah, there it is. 7. Go down to the  
17 middle of the page.

18 BY MR. BURKS:

19 Q So the date of the lien affidavit of Arin-Air was  
20 8/11/23 irrespective of this enforceability. And the --

21 MR. TROOP: Object -- I'm sorry, Your Honor.

22 MR. BURKS: Can I ask the question?

23 MR. TROOP: Well, no, because it's about what  
24 you're talking about. It's not admissible.

25 MR. SATHER: Your Honor, this --

1 THE COURT: Whoa, whoa, whoa. One at a time. One  
2 at a time. I'll let you go, Mr. Sather, but let him talk  
3 first. Don't interrupt him. Thank you. Go ahead.

4 MR. TROOP: Your Honor, I do not believe that the  
5 Arin-Air proof of claim has been admitted into evidence. If  
6 it's not been admitted into evidence, you're entitled to  
7 take judicial notice of the fact that it is on the claims  
8 register, but you can't take anything about it as being true  
9 for a fact that's been asserted. There's no foundation for  
10 that. And therefore to the extent that this line of  
11 questioning is trying to elicit something between the truth  
12 of a document that is not admitted for the truth, it can't  
13 be admitted for the truth of it and another document. But  
14 the line of questioning should be prohibited, Your Honor.

15 THE COURT: Mr. Burks, I'll let you respond to  
16 that. Go ahead. And I'll let Mr. Sather respond as well.

17 MR. BURKS: So you can do -- I'm asking the Court  
18 to take judicial notice of Docket Number 496-1, which is the  
19 proof of -- excuse me.

20 THE COURT: I'll take judicial notice of the  
21 claims register in 2334815 Galleria 2425 (indiscernible).

22 MR. BURKS: And all I'm asking is the Court to  
23 take judicial notice that the claim includes (indiscernible)  
24 with the date. Whether it's valid or not is for you to  
25 decide when you write your opinion on this (indiscernible).

1 THE COURT: Okay. So what's your question to this  
2 witness then?

3 MR. BURKS: My question is comparing the date of  
4 lien on (indiscernible) for Arin-Air from 8/11/2023, whether  
5 valid or not, is it before or after the trust date, whether  
6 valid or not, in 2425 WL from Proof of Claim 7.

7 THE COURT: Mr. Burks, that has so much  
8 speculation in it, it's not even that funny. So I'm not  
9 going to allow that question. But I can look at the claims  
10 here to strike and compare dates. Thank you.

11 MR. BURKS: All right. I ask -- hold on, please.  
12 Your Honor, I ask the Court to take judicial notice of Claim  
13 7-1 --

14 THE COURT: I've already taken judicial notice of  
15 the entire claims register, Mr. Burks.

16 MR. BURKS: I ask the Court to take judicial  
17 notice that the date of trust purports to be recorded on  
18 8/11/2021.

19 THE COURT: Scrolling down, that's an official  
20 copy, right?

21 MR. BURKS: Yes, Your Honor.

22 THE COURT: It's unofficial.

23 MR. BURKS: On the proof of claim it purports to  
24 be recorded on 8/11/2021.

25 THE COURT: What claim is that, Mr. Burks?

1 MR. BURKS: This is Claim 7, the claim on 2425 WL.  
2 Go to the first page where it says the date on it.

3 THE COURT: Bear with me for one second. I'm  
4 looking at it. I'm pulling it off ECF.

5 MR. BURKS: Let me see it (indiscernible). You're  
6 going to put it on the screen, Judge?

7 THE COURT: Yeah, I'm going to look at it. But I  
8 can put it on the screen. It's already on the screen.

9 MR. BURKS: Mm hm. All right. Keep going. Stop.

10 THE COURT: You want me to take judicial notice of  
11 the fact that it was recorded on 5/11/2021? Is that what  
12 you're asking?

13 MR. BURKS: That the proof of claim purports to  
14 claim that it was recorded on 5/11/2021.

15 THE COURT: The recording information seems to  
16 indicate that it was filed on 5/11/2021. That's at the top  
17 of Page 5 of 18. I'll take judicial notice that.

18 MR. BURKS: Thank you, Your Honor. May I ask the  
19 Court to take judicial notice of Docket Number 496-1, the  
20 proof of claim of Arin-Air Inc.?

21 THE COURT: I've already taken judicial notice of  
22 the entire claims register, Mr. Burks. I don't need to.

23 MR. BURKS: Will you take judicial notice that the  
24 lien affidavit purports to be recorded on 8/11/2023?

25 THE COURT: I'll take judicial notice of the

1 recording stamp dated 8/11/2023, Claim 17-1 on Page 4 of 9.

2 MR. BURKS: Yes, Your Honor. Thank you.

3 BY MR. BURKS:

4 Q Mr. Carter, on that class of trade creditors, they are  
5 getting paid 70 percent of their allowed claims. Are you  
6 aware of any of those claims that have recorded mechanic's  
7 and (indiscernible) liens?

8 A No.

9 MR. BURKS: Your Honor, I may be complete with my  
10 cross of this witness. May I -- Mr. Ali Choudhri did ask  
11 for me to speak to him. May I take --

12 THE COURT: That's fine.

13 MR. BURKS: -- 60 seconds or more? How much time  
14 may I have? 90 seconds?

15 THE COURT: I'll give you as much time as you  
16 need, Mr. Burks. I don't want to cut anyone off from asking  
17 questions as long as they're relevant. So go ahead.

18 MR. BURKS: Thank you, Judge. I'd rather handle  
19 it this way.

20 BY MR. BURKS:

21 Q Go back to the very beginning of the plan. You talked  
22 a little with your client -- with your attorney, sorry. You  
23 talked with your attorney about the negotiation and proposal  
24 of the plan. Did NBK negotiate the terms of this plan with  
25 the Chapter 11 trustee?

1 A No.

2 Q Did NBK provide the terms of the plan to the Chapter 11  
3 trustee?

4 A Our lawyers did the initial draft.

5 Q Okay. Do you know -- for purposes of this hearing, do  
6 you know if the Chapter 11 trustee asked for a cap on credit  
7 bidding?

8 A They did.

9 Q Excuse me?

10 A They did.

11 Q And was a cap on credit bidding provided in the plan?

12 A We declined that request.

13 Q All right. Did the Chapter 11 trustee request more  
14 funds be paid in for the release of claims?

15 A That was a suggestion they made.

16 Q Is -- and did you? Did you agree to provide more than  
17 the estimated 3.7 note?

18 MR. FITZMAURICE: Objection, Your Honor. The  
19 question is misleading. The first question was what was  
20 initially requested, and now it's what is ultimately  
21 provided. And counsel is asking whether what was initially  
22 requested -- there's a logical connection between the two,  
23 and he hasn't established that they're in fact --

24 THE COURT: Let's ask a little more detail, Mr.  
25 Burks.

1 MR. BURKS: Fair enough. I agree. Sorry.

2 BY MR. BURKS:

3 Q You're aware of the cash payments in the -- that are  
4 provided for -- required of the bank if they get a release  
5 and the plan's confirmed, correct?

6 A Yes.

7 Q And your estimation is that it was about -- it's going  
8 to be more or less \$3.7 million.

9 A Yes.

10 Q And the board's approved that.

11 A Yes.

12 Q Did the trustee ask for more than that amount of \$3.7  
13 million?

14 A I'm not aware of any specific request of an amount.

15 Q Did the trustee ask for more? Not an amount, more than  
16 \$3.7 million.

17 A Well, that's an estimate. It could be more.

18 Q Did the trustee ask for more than \$3.7 million?

19 MR. FITZMAURICE: Objection. Asked and answered.

20 THE COURT: And I'll sustain the objection.

21 BY MR. BURKS:

22 Q Has NBK's board approved more than \$3.7 million?

23 MR. FITZMAURICE: Objection, Your Honor.

24 Mischaracterizes the witness' testimony.

25 THE COURT: I'll sustain the objection.



1 BY MR. BURKS:

2 Q Do you know --

3 MR. SATHER: Your Honor, if I may, I believe the  
4 two counsel from NBK are making objections. I would request  
5 that they be limited to a single counsel per witness.

6 THE COURT: Mr. Fitzmaurice will make objections.  
7 Go ahead.

8 BY MR. BURKS:

9 Q Do you know how many negotiating sessions there were  
10 between NBK's attorneys and the Chapter 11 trustee or the  
11 Chapter 11 trustee's attorneys? I'm not asking you for what  
12 was said, but do you know how many negotiation sessions were  
13 made?

14 A No.

15 MR. FITZMAURICE: Objection, Your Honor. Lacks  
16 foundation.

17 THE COURT: He answered the question. I don't  
18 need to rule on the objection. Go ahead.

19 BY MR. BURKS:

20 Q You negotiate deals and workouts on loans, don't you?

21 A Yes.

22 Q Isn't it true that NBK in its negotiations constantly  
23 told the Chapter 11 trustee if you want the cash, I got to  
24 have credit bidding?

25 MR. FITZMAURICE: Objection, Your Honor. Lacks

1 foundation.

2 MR. BURKS: He either knows or he doesn't.

3 THE COURT: I'll overrule the objection.

4 BY MR. BURKS:

5 Q If you want the cash, we've got to have credit bidding.  
6 Was that a point that the bank made with the trustee?

7 MR. FITZMAURICE: So objection, Your Honor, to the  
8 extent that the question calls for the witness to reveal the  
9 contents of attorney-client privileged communications for  
10 which I instruct him not to do so.

11 MR. BURKS: I asked him what the bank's position  
12 was. I was careful not to dance in between the bank and the  
13 attorneys.

14 MR. FITZMAURICE: Well, what he asked was what did  
15 the bank's lawyers say to the trustee.

16 THE COURT: I'll sustain the objection as to  
17 privilege. Thank you.

18 BY MR. BURKS:

19 Q Did the bank -- not the bank's lawyers, did the bank  
20 take the position that no credit bidding equals no \$3.7  
21 million in the plan?

22 A We agree with that concept, yes.

23 Q Isn't it true that the bank said no release of claims,  
24 no release of liability, no \$3.7 million?

25 A We agreed with that concept, yes.

1 Q Is there any other plan on file right now for the  
2 Chapter 11 trustee to consider?

3 A Not that I know of.

4 Q So it's your plan or the highway, correct?

5 A From my understanding.

6 MR. FITZMAURICE: Objection, Your Honor.  
7 Argumentative.

8 THE COURT: That's argumentative, Mr. Burks.

9 MR. BURKS: Yes, Your Honor. Only 30 seconds to  
10 confer with counsel to make sure that --

11 THE COURT: Go ahead.

12 MR. BURKS: Your Honor, I'm checking my notes to  
13 make sure that I've asked what I need to ask and then I'll  
14 pass the witness. Thank you, Your Honor. Pass the witness.

15 THE COURT: All right. Mr. Baker?

16 MR. BAKER: No additional questions, Your Honor.

17 THE COURT: All right. Thank you. Mr.  
18 Fitzmaurice?

19 MAN 1: Your Honor? May I ask a few, Your Honor?

20 THE COURT: No, you may not. Thank you.

21 MAN 1: I thought I misunderstood maybe in the  
22 beginning of the hearing you said that I would be able to  
23 ask --

24 THE COURT: You may sit down, sir. Thank you. Go  
25 ahead.

1 MR. FITZMAURICE: Your Honor, briefly, before I  
2 begin, have we invoked the rule? I just want to make sure I  
3 understand who the rest of the -- other than the marshals in  
4 the back, the -- I understand who the rest of the folks are  
5 in the courtroom who are sitting behind the bar.

6 THE COURT: I --

7 MR. FITZMAURICE: Mr. Steidley is counsel for  
8 2425. I want to make sure he's here in that capacity, not  
9 as a witness given we've had lots of lawyers called as  
10 witnesses.

11 THE COURT: The rule's --

12 MR. FITZMAURICE: And he was previously a witness.

13 THE COURT: The rule's been invoked. If they  
14 violate the rule, it's on the people who are sitting at that  
15 table right over there. They know what the rule is. And if  
16 it's invoked and it's violated, then they don't get to  
17 testify. It's simple. Thank you.

18 MR. FITZMAURICE: Thank you, Your Honor.

19 REDIRECT EXAMINATION OF MICHAEL CARTER

20 BY MR. FITZMAURICE:

21 Q Mr. Carter, do you know whether the Chapter 11 trustee  
22 has filed an objection to 2425 WL's proof of claim?

23 MR. BURKS: Excuse me, Your Honor. I'm invoking  
24 the rule on Mr. Steidley. Somebody might call him.

25 THE COURT: He's already been in the witness --

1 he's already been -- he's already heard testimony. He can't  
2 testify.

3 MR. BURKS: All right.

4 THE COURT: Thank you.

5 BY MR. FITZMAURICE:

6 Q I'll repeat the question, Mr. Carter. Do you know  
7 whether the Chapter 11 trustee has filed an objection to the  
8 2425 WL proof of claim?

9 A Not that I know of.

10 Q Okay. Counsel was asking you questions about the  
11 classification of claims in the plan. Do you recall that?

12 A Yes.

13 Q And one of those questions was about Class 7  
14 subordinated claims. Do you recall that?

15 A Yes.

16 Q Just in general --

17 A Oh.

18 Q -- that he asked you questions about that topic.  
19 That's all I'm asking for now.

20 A Yes.

21 Q Okay. Do you know whether there are in fact any  
22 creditors in Class 7?

23 A Not that I know of.

24 Q Okay. Do you know whether the trustee has filed a  
25 complaint seeking to equitably subordinate certain claims

1 that have been filed in this case by affiliates of Mr.

2 Choudhri?

3 A Not that I know of.

4 Q Okay. There were some questions that were asked of you  
5 about a proof of claim filed by Arin-Air. Do you recall  
6 those questions?

7 A Yes.

8 Q And do you recall that Mr. Burks was asking whether you  
9 knew anything about whether that claim was in fact secured?  
10 Do you recall those questions?

11 A Yes.

12 Q Okay. Do you know whether that claim filed by Arin-  
13 Air, if it's allowed, is senior in priority to the bank's  
14 claim?

15 A Not that I know of.

16 Q Okay. If it is senior in priority to the bank's claim,  
17 do you know what happens to it under the plan?

18 A I believe it goes into Category 2.

19 Q And do you know what -- do you recall what the  
20 treatment is to those claims?

21 A It's 100 percent payment.

22 Q Okay. Do you know whether the period of time for the  
23 estate to object to claims, whether that period of time has  
24 passed?

25 A I don't know that specific.

1 Q Did you specifically, you, Mr. Carter, did you  
2 negotiate any terms of the Chapter 11 plan of liquidation  
3 with the Chapter 11 trustee?

4 A No.

5 Q Do you know whether any other bank employee negotiated  
6 the terms of the plan on behalf of -- well, with the Chapter  
7 11 trustee?

8 A No.

9 Q Do you know whether counsel for NBK negotiated the  
10 terms of the Chapter 11 plan with the Chapter 11 trustee?

11 A That's my understanding, yes.

12 Q The bank has previously sought to foreclose its  
13 mortgage against the property. Is that correct?

14 A Yes.

15 Q And in the event of a foreclosure, do you have an  
16 understanding as to what would happen to any lien that comes  
17 after the banks?

18 A They would be wiped out --

19 Q Would they --

20 A -- if the bank is not fully repaid.

21 Q And if there are any parties who hold any unsecured  
22 claims, would they receive any benefit in the event of a  
23 foreclosure?

24 A Not if the bank is not fully repaid.

25 MR. BURKS: Objection. Calls for speculation as

1 to what would be brought in at a foreclosure.

2 MR. FITZMAURICE: The witness' answer I think  
3 resolves the question. He said unless -- not if the bank  
4 wasn't fully repaid.

5 THE COURT: I'll overrule the objection. Thank  
6 you. Based on the response.

7 BY MR. FITZMAURICE:

8 Q Thank you, Mr. Carter.

9 MR. FITZMAURICE: No further questions, Your  
10 Honor.

11 THE COURT: Mr. Burks?

12 MR. BURKS: Yes, Your Honor.

13 RECROSS-EXAMINATION OF MICHAEL CARTER

14 BY MR. BURKS:

15 Q Mr. Carter --

16 MR. BURKS: Put the plan up please. It's 23.  
17 It's 194.

18 BY MR. BURKS:

19 Q Bear with me, Mr. Carter. I want to ask you a question  
20 about the plan without being -- I believe we're on page --  
21 the first page. You're the representative of the bank,  
22 correct?

23 A Yes.

24 Q A deposition was taken of an officer of the bank who  
25 had knowledge of this case. Within the scope of that



1 deposition -- and was that taken of you?

2 A Yes.

3 Q Are you --

4 MR. FITZMAURICE: Your Honor, objection as beyond  
5 the scope. I think he's limited to what the redirect was.

6 THE COURT: It is. He is limited, but he's asked  
7 about a deposition. That could be impeachment. I'll let  
8 him go. But if it's beyond the scope you can raise your  
9 objection again. Go ahead.

10 MR. BURKS: I would never do that, Judge.

11 THE COURT: I don't believe that for a minute, Mr.  
12 Burks.

13 MR. BURKS: I tried to keep a straight face.

14 BY MR. BURKS:

15 Q Mr. Carter, you recognize this document, correct?

16 A Yes.

17 Q All right. Who signed this?

18 A Well, if you scroll down I could tell you.

19 Q Thank you.

20 A Yes, it's me.

21 Q And the National Bank of Kuwait signed it through its  
22 representative Michael Carter, correct?

23 A Yes.

24 MR. BURKS: Mr. Baker, scroll down.

25 BY MR. BURKS:

1 Q Did the law firm sign it? I don't see their signature.

2 Did the law firm sign it?

3 MR. FITZMAURICE: Your Honor, we'll stipulate that  
4 the bank signed and the law firms didn't.

5 THE COURT: All right. Thank you. It's -- I'll  
6 take the stipulation. Thank you.

7 BY MR. BURKS:

8 Q Is your statement that you had no knowledge of the  
9 negotiation of the terms of this plan?

10 MR. FITZMAURICE: Objection, Your Honor.  
11 Mischaracterizes the witness' testimony.

12 MR. BURKS: I asked him if it was.

13 THE COURT: I think it mischaracterizes his prior  
14 testimony. Ask a different question.

15 MR. BURKS: Yes, Your Honor.

16 BY MR. BURKS:

17 Q Do you know the terms back and forth of the  
18 negotiations of this plan that you signed?

19 A Generally. Generally, yes.

20 MR. BURKS: Nothing further, Judge.

21 THE COURT: All right. Thank you. Mr. Baker?

22 MR. BAKER: Nothing further, Your Honor.

23 THE COURT: All right. Thank you. Mr.

24 Fitzmaurice?

25 MR. FITZMAURICE: Nothing further for Mr. Carter,

1 Your Honor.

2 THE COURT: Thank you. Mr. Carter, you're  
3 excused. You may step down. Thank you. All right. Mr.  
4 Fitzmaurice, next witness.

5 MR. FITZMAURICE: Your Honor, National Bank of  
6 Kuwait calls the Chapter 11 trustee Christopher Murray.

7 THE COURT: All right. Mr. Murray, come on  
8 forward. I'll swear you in. Please raise your right hand  
9 and be sworn. Do you swear or affirm to tell the truth, the  
10 whole truth, and nothing but the truth so help you God?

11 THE WITNESS: I do.

12 THE COURT: Thank you. Have a seat.

13 DIRECT EXAMINATION OF CHRISTOPHER MURRAY

14 BY MR. FITZMAURICE:

15 Q Good morning, Mr. Murray.

16 A Good morning.

17 Q Were you in the courtroom earlier this morning when the  
18 Court took appearances?

19 A I was.

20 Q Did you hear Mr. Shannon tell the Court that the  
21 Chapter 11 trustee supports confirmation of the bank's plan?

22 A Yes, I did.

23 Q Do you support confirmation of the bank's plan?

24 A I do.

25 Q Why?

1 A It is -- if confirmed, will lead to a superior outcome  
2 for unsecured creditors and other parties in interest than  
3 the alternative.

4 Q Is there presently an alternative?

5 A No.

6 Q Was there previously an alternative?

7 A There were other plans filed but ultimately withdrawn.

8 Q In your role as Chapter 11 trustee, did you evaluate  
9 the benefit to the estate from -- at the time when there  
10 were in fact competing plans?

11 A Yes.

12 Q And did you make a determination as to which of the  
13 competing plans was superior from the estate's purposes?

14 A Yes.

15 Q I should say from the estate's perspective.

16 A Yes.

17 Q Okay. What was that determination?

18 A I determined that the NBK plan was more likely to be  
19 confirmed and therefore in the creditor's best interest.  
20 And in that sense, superior to the competing plans.

21 Q What factors did you consider in determining whether or  
22 not you thought -- that you thought the bank's plan was more  
23 likely to be confirmed than the plan proposed by the debtor?

24 A I considered feasibility in terms of ability to fund.  
25 That was critical. I considered what -- whether there'd be

1 enough money for admins. I considered permission to use  
2 cash collateral, which was essential to keep the business in  
3 an 11. I considered what recovery to unsecured creditors  
4 might be. I considered how causes of action would be  
5 preserved or not. And I considered my assessment of  
6 confirmability of the plan. There might be other things,  
7 but those are what come to mind right now.

8 Q And after consideration of all of those factors, you  
9 made the determination that the bank's plan was superior to  
10 the debtor's plan. Is that right?

11 A Well, yeah. I'd say that I think it was superior to  
12 not having a plan.

13 Q Did you make a determination as to whether you thought  
14 the debtor's plan was confirmable?

15 A I did.

16 Q Did you make a determination as to whether you thought  
17 the debtor's plan was feasible?

18 A Yes.

19 Q What was that determination?

20 A I didn't believe it was feasible.

21 Q Why did you believe the debtor's plan was not feasible?

22 A Lack of funding primarily, but also the de facto veto  
23 that the bank would have absent adequate assurance payments  
24 and adequate protection, which I didn't see the feasibility  
25 of.

1 MR. FITZMAURICE: Your Honor, may I project?

2 THE COURT: Sure.

3 MAN 1: (indiscernible)?

4 MR. FITZMAURICE: Please. Thank you.

5 MAN 1: Thank you.

6 BY MR. FITZMAURICE:

7 Q Mr. Murray, I'm showing you Document ECF 302. Do you  
8 recognize this to be the third amended plan that was  
9 proposed by the debtor jointly with 2425 WL?

10 A Yeah, that's what it says.

11 Q Do you recall whether the funding source was for the  
12 payments that the debtor was required to make under this  
13 plan?

14 A I don't. I don't remember.

15 MAN 1: I think you're having your Adobe problem  
16 again.

17 MR. FITZMAURICE: Oh, I am. That's unfortunate.  
18 Here I was, Your Honor. I thought I was organized. I had  
19 all my documents open. All my -- for my witnesses ready to  
20 go. I apologize.

21 THE COURT: There are reasons why we hate Adobe,  
22 and this is one of them.

23 MR. FITZMAURICE: So Your Honor, I'm going to ask  
24 my colleague to open the document at ECF 302, which is the  
25 debtor's third amended plan. I will unplug. And I'm going

1 to ask you, Mr. Akuffo, to scroll down to the end. Yep. Up  
2 a little bit to the first page of the term sheet.

3 BY MR. FITZMAURICE:

4 A Okay. I see that.

5 Q Do you recall reviewing this summary of key terms of  
6 and conditions for debtor-in-possession term loan facility?

7 A Yes. Yes.

8 Q Do you know whether this was, in fact, the source of  
9 funding for the payments the debtor was required to make  
10 under its third amended plan?

11 A Yes, I think that's what they were proposing to fund  
12 their plan with. Yes. Yeah.

13 Q Did you make an assessment as to whether or not funding  
14 would in fact be available?

15 A Yes.

16 Q And what was that assessment?

17 A I doubted it would be.

18 Q And what were the factors that led to that conclusion?

19 A Well, the history of the debtor generally being unable  
20 to secure funding even for its settlement agreement, the  
21 inability to fund its first bankruptcy case, its inability  
22 to show a commitment to funding at any point during the  
23 case. Those things generally, but also a proposed DIP  
24 lender term sheet is not a loan.

25 Q Do you know whether this term sheet contemplated a loan

1 that would prime the bank's lien?

2 MR. FITZMAURICE: I'll ask you, Mr. Akuffo, to  
3 scroll --

4 BY MR. FITZMAURICE:

5 A I don't remember this one specifically. I remember  
6 thinking --

7 MR. FITZMAURICE: Go up a little bit.

8 BY MR. FITZMAURICE:

9 A Yeah.

10 MR. BURKS: Your Honor, I object to any further  
11 answer. The document speaks for itself and he has answered  
12 that he doesn't remember.

13 MR. FITZMAURICE: Your Honor, I'm allowed to use  
14 essentially anything to try to refresh the witness'  
15 recollection, which is what I'm trying to do.

16 THE COURT: That's fine. I'll overrule the  
17 objection.

18 BY MR. FITZMAURICE:

19 Q Mr. Murray, I'd ask you to look at the sort of middle  
20 portion of your screen. Does that refresh your recollection  
21 as to whether or not --

22 A I see now it's a priming DIP.

23 Q Okay. Did you make an assessment as to whether you  
24 thought a priming DIP would be available to the debtor in  
25 this case?



1 A I did.

2 Q And what was that assessment?

3 A That they would not be able to meet the requirements to  
4 prime.

5 Q Do you know whether the debtor sought to support its  
6 payment obligations in connection with its fourth amended  
7 plan with this same term sheet?

8 A I don't remember.

9 MR. FITZMAURICE: So I'm going to ask my colleague  
10 to pull up Document Number ECF 366. Sorry, 366.

11 MAN 1: 365.

12 MR. FITZMAURICE: 366 is what I'm looking for. Go  
13 to the first page, please.

14 MAN 1: (indiscernible).

15 MR. FITZMAURICE: I don't. Thank you.

16 BY MR. FITZMAURICE:

17 Q Mr. Murray, I'm showing you the document at ECF 366.  
18 Do you recognize this to be the disclosure statement the  
19 debtor filed in connection with its fourth amended joint  
20 plan with 2425 WL?

21 A Yes, I do.

22 MR. FITZMAURICE: So I'll ask my colleague to move  
23 to Page 47 of 129.

24 MR. BURKS: Is this the fourth amended  
25 (indiscernible)? What's --

1 BY MR. FITZMAURICE:

2 Q Do you see there, Mr. Murray, the same summary key  
3 terms of the conditions for debtor-in-possession term loan  
4 facility?

5 A Yes, it looks like the one we just looked at.

6 Q All right. And does this refresh your recollection as  
7 to whether the same contemplated financing from Legalist was  
8 used by the debtor to support the payments for  
9 (indiscernible) it made under its fourth amended plan?

10 A I mean, not this specifically, but I recall that the  
11 funding source in those plans was the same. Or would've  
12 been the same had they had the funding.

13 Q Thank you.

14 MR. FITZMAURICE: And Mr. Akuffo, if we could go  
15 to ECF Number 377 please.

16 BY MR. FITZMAURICE:

17 Q Mr. Murray, do you recognize this to be the debtor's  
18 fifth amended plan?

19 A Yes.

20 Q And this was the last plan the debtor had on file?

21 A Yes.

22 Q And this is the plan that was ultimately withdrawn?

23 A That's my understanding, yes.

24 MR. FITZMAURICE: I don't have the page number.

25 Can you scroll down for me?

1 MAN 1: Yeah, he's looking for the term sheet.

2 MR. FITZMAURICE: Thank you.

3 BY MR. FITZMAURICE:

4 Q Mr. Murray, do you see again in the same May 3, 2024  
5 summary of key terms under the conditions for debtor-in-  
6 possession term loan facility?

7 A Yeah. It looks like the same term sheet, yes.

8 Q So is it your understanding that the debtor was again  
9 contemplating using the same facility in support of the  
10 payments under the fifth amended plan?

11 A Yeah, it was the Legalist funding. Yes.

12 Q Are you aware of whether Legalist ever approved its  
13 funding?

14 A No, I'm not.

15 Q Do you know of -- has anyone told you that Legalist did  
16 not in fact approve funding for the plan?

17 MR. BURKS: Calls for hearsay. Has anyone told  
18 you?

19 THE COURT: I'll sustain the objection.

20 BY MR. FITZMAURICE:

21 Q Do you know whether or not Legalist ever in fact  
22 approved funding contemplated by the debtor's plan?

23 MR. BURKS: Objection. Calls for hearsay. He  
24 already stated that he's not aware.

25 MR. FITZMAURICE: But the last question was

1 whether somebody told him. This is whether he's aware.

2 MR. BURKS: Two questions ago was, was he aware.

3 THE COURT: I'll overrule the objection. He can  
4 answer the question. Thank you. If you're aware.

5 BY MR. FITZMAURICE:

6 A I know we had asked for information to confirm that --  
7 whether there was funding. I never saw any kind of  
8 confirmation. So...

9 MR. FITZMAURICE: I'm going to ask my colleague to  
10 pull up a document at ECF 527-3.

11 BY MR. FITZMAURICE:

12 Q Mr. Murray, you've got in front of you a document  
13 that's ECF 527-3, a June 13, 2024 email. That purports to  
14 be an email from someone named Brian Rice to me. Do you see  
15 that?

16 A I see it.

17 Q Reading this email, does that refresh your recollection  
18 as to whether or not Legalist ever approved the finance --  
19 the contemplated financing for the debtor?

20 MR. BURKS: Objection. The rules of evidence do  
21 not allow that witness' recollection to be refreshed by a  
22 hearsay document.

23 MR. FITZMAURICE: In fact, they specifically do,  
24 Your Honor. I'm allowed to show him anything.

25 THE COURT: I'll overrule the objection.

1 BY MR. FITZMAURICE:

2 A I mean, it doesn't refresh my recollection. I don't  
3 think I've seen this email.

4 Q Okay. Thank you.

5 MR. FITZMAURICE: You can take that one down.

6 Thank you. Actually, sorry. Just one more. ECF Number  
7 474.

8 BY MR. FITZMAURICE:

9 Q Mr. Murray, showing you what's -- the document that's  
10 been docketed at ECF Number 474.

11 MR. FITZMAURICE: Just scroll up to the top so we  
12 can see that please. Thank you.

13 BY MR. FITZMAURICE:

14 A I recognize this.

15 Q And is this the debtor's withdrawal of its fifth  
16 amended plan?

17 A Yeah, right before a show-cause hearing on the plan,  
18 yes.

19 Q Do you know what that show-cause hearing was intended  
20 to address?

21 A I recall that the court ordered the disclosure of  
22 documents evidencing availability of funding. Something  
23 like that. And I remember waiting for that day. Then it  
24 came and went and there was no proof of funding that was  
25 ever filed.

1 MR. FITZMAURICE: Okay. You can take this one  
2 down. Thank you.

3 BY MR. FITZMAURICE:

4 Q Mr. Murray, are you aware of whether or not the debtor  
5 has asserted claims against the National Bank of Kuwait?

6 A Yes.

7 Q In the course of your duties in this case as the  
8 Chapter 11 trustee, have you investigated those claims?

9 A Yes.

10 MR. FITZMAURICE: I'm just going to grab a  
11 document from the table if that's okay.

12 THE COURT: That's fine. Feel free.

13 MR. FITZMAURICE: Always at the bottom of the  
14 pile.

15 BY MR. FITZMAURICE:

16 Q So Mr. Murray, I'd like to discuss with you the things  
17 that you did to investigate the debtor's claims against the  
18 bank. Did you discuss the nature of those claims with the  
19 debtor's counsel?

20 A Yes.

21 Q Now the debtor has more than one counsel. Is there --  
22 can you let us know who you spoke to?

23 A At different points I spoke to Mr. Baker, I spoke to  
24 Mr. Choudhri personally, spoke to Ms. Hayward, spoke with  
25 Mr. Alexander. At some point I think we spoke, but Mr.

1 Sather. I don't think I discussed it ever with Mr. Burks.  
2 Might have discussed it with Ms. Brown, but I don't remember  
3 that. But there were lots of discussions with the debtor  
4 and its representatives about the claims.

5 Q Do you have in your mind a rough estimate of the time  
6 that was spent by you having conversations with the debtor  
7 and/or its representatives relating to the claims asserted  
8 against the bank?

9 MR. BURKS: Objection, Your Honor. Ambiguous. I  
10 need to know is he talking about his time personally or his  
11 counsel's time combined with his or his counsel's time.

12 THE COURT: I understood the question to be his  
13 time, so I'll take it such. Mr. Murray, go ahead.

14 BY MR. FITZMAURICE:

15 A Personally probably a dozen hours.

16 Q Are you aware of whether or not your counsel had any  
17 separate conversations with any of those folks that you were  
18 not involved in?

19 A I believe they had lots of conversations, yes.

20 Q And do you know approximately how much time your  
21 counsel spent talking to those folks about the debtor's  
22 claims against the bank?

23 A I don't know.

24 Q Rough order of approximation more or less than -- of  
25 the time that you spent? If you know.

1 MR. BURKS: Objection. Asked and answered I don't  
2 know.

3 THE COURT: I'll sustain the objection. Thank  
4 you, Mr. Burks.

5 BY MR. FITZMAURICE:

6 Q Did you discuss the claims with Mr. Choudhri?

7 A Yes.

8 Q On one occasion, more than one occasion?

9 A At least three in person and there were other  
10 communications too. I don't know how many.

11 Q Did you review any pleadings filed by the debtor  
12 against the National Bank of Kuwait?

13 A Yes.

14 Q Did you review any pleadings relating to claims filed  
15 by Mr. Choudhri against the National Bank of Kuwait?

16 A Yes, I think so.

17 Q Did you review any pleadings relating to any claims  
18 filed by 2425 WL against the National Bank of Kuwait?

19 A Yes.

20 Q Mr. Murray, do you know who James Pope is?

21 A I don't know him personally. I think he entered an  
22 appearance as debtor's counsel.

23 Q Did you talk to him at all about the claims against the  
24 bank?

25 A He might've been on one of the early phone calls, but I



1 don't remember specifically.

2 Q There was an attorney who testified here on Monday  
3 named Jim Wetwiska. Do you recall that?

4 A Yes. Yes.

5 Q Did you speak with Mr. Wetwiska about the claim against  
6 the bank?

7 A I did, yes.

8 Q There was another attorney who testified here on Monday  
9 named Jerry Alexander. Do you recall that?

10 A Yes.

11 Q And did you speak with Mr. Alexander about the claims  
12 against the bank?

13 A Yes.

14 Q Did you speak with anyone -- so again, in the context  
15 of your investigation into the claims against the bank, did  
16 you speak with anyone that's not affiliated with the debtor?

17 A Yes.

18 Q Can you recall anyone that you spoke with who wasn't  
19 affiliated with the debtor?

20 A Well, I spoke with your team. I know my counsel  
21 interviewed Mr. Cauldwell. I and my counsel spoke with a  
22 woman named Azeemeh Zaheer and her counsel. And that's who  
23 I can recall right now.

24 Q Without revealing anything that you discussed with the  
25 contents of any communications, the specific contents of any

1 communications you had with your attorneys, did you in  
2 general discuss counsel's meeting with Mr. Cauldwell with  
3 counsel?

4 A Yes.

5 Q And I apologize. I don't recall whether you said you  
6 attended the meeting with Ms. Zaheer or not.

7 A I was at most of the meeting with Ms. Zaheer. Then I  
8 had to leave.

9 Q Okay. Again, without revealing the contents of any  
10 communications with counsel, did you discuss with them the  
11 portions of the meeting that you missed?

12 A Yes.

13 Q Whether formally or informally, did you request  
14 document production from the debtor?

15 A Yes, we did.

16 Q And were any documents provided?

17 A I don't think they ever produced anything in the formal  
18 discovery.

19 Q But informally did the debtor provide you with any  
20 information? Withdrawn. Informally, did the debtor provide  
21 you with any documents?

22 A Yes.

23 Q Do you recall what those were?

24 A I recall there was a letter and an email I think from  
25 Mr. Alexander. There might've been a letter or email from

1 Mr. Wetwiska. At some point there was a PowerPoint  
2 presentation I think. I think that was about the claims  
3 against the bank that we paged through at Mr. Choudhri's  
4 desk early on. There might've been some other papers, but  
5 that's all I remember was informally produced.

6 Q And that description of the discovery, is that the same  
7 if I ask you about Mr. Choudhri and the debtor and 2425 WL?

8 A Yes. I don't the WL entity provided anything apart  
9 from what Mr. Choudhri provided.

10 Q In connection with assessing the estate's claims  
11 against the bank, did you review the settlement agreement?

12 A Yes.

13 Q In connection with assessing the estate's claims  
14 against the bank, did you form a view as to the  
15 enforceability of the settlement agreement?

16 A Yes.

17 Q And what was that view?

18 MR. BURKS: Objection. This is a multi-layered  
19 question based on his entire investigation. The --  
20 everything that is attorney-client privilege with respect to  
21 NBK, unless the trustee has waived it, is privileged. WL --  
22 these are settlement negotiations regarding the description  
23 of the settlement agreement, parties' views of them. 2425  
24 WL does not waive the settlement privilege.

25 MR. FITZMAURICE: So I'm not asking about any of

1 that. I'm asking about the confidential settlement  
2 agreement that was entered into between the debtor Mr.  
3 Choudhri, and Naissance Galleria on the one hand and the  
4 National Bank of Kuwait on the other hand. The agreement  
5 that is in evidence, that's the agreement that I'm talking  
6 about. And 2425 is not a party to that. So I'm not sure  
7 what the basis of the objection is.

8 THE COURT: Go ahead. Make your objection again.

9 MR. BAKER: Your Honor, the debtor does not waive  
10 -- agree to waive the privilege. I'm going to object.

11 MR. FITZMAURICE: Mr. Baker has no right to assert  
12 the debtor's privilege. There's a Chapter 11 trustee in  
13 this case.

14 THE COURT: Mr. Baker, you can't assert any  
15 privilege to the debtor. That's clear. You can't. Okay?  
16 So Mr. Burks, tell me your objection one more time.

17 MR. BURKS: Yes, Your Honor. The -- NBK's  
18 attorney has gotten the trustee to state a wide variety of  
19 things in conversations and documents that he's looked at.  
20 And then based on his analysis of everything, he's being  
21 asked to form a legal conclusion as to the validity of the  
22 settlement agreement based on all the conversations, almost  
23 of which are privileged settlement communications, Judge.

24 THE COURT: I disagree. I really do. You can  
25 answer the question. I'll overrule the objection.

1 MR. BURKS: Based only his view of the settlement  
2 agreement?

3 THE COURT: I overruled the objection, Mr. Burks.  
4 You don't get to reargue the objection. Please sit down.  
5 Thank you. Go ahead. You can answer the question.

6 BY MR. FITZMAURICE:

7 Q Do you recall the question?

8 A I think it was what my -- ask again.

9 Q Yes. After -- as a result of the investigation that  
10 you performed in connection with reviewing the estate's  
11 claims against the bank, did you form a view as to the  
12 enforceability of the settlement agreement?

13 A Yes.

14 Q And what was that view?

15 A That it was likely enforceable.

16 Q In conducting your investigation, were you looking for  
17 factual support for the concept that the settlement  
18 agreement could be rescinded?

19 A Yes.

20 Q Did you find any?

21 A No.

22 Q Are you aware that Mr. Choudhri and the debtor assert  
23 claims against the bank that relate to events that occurred  
24 after August 22nd of 2022?

25 A Yes.

1 Q And I'll just represent to you that's the date of the  
2 settlement agreement. We can look at it, but the document's  
3 in evidence. Did they provide you any factual support for  
4 those claims?

5 A They told me what their allegations were, yes.

6 Q Did they provide you with any documentary evidence in  
7 support of those claims?

8 A No.

9 Q Did you form a view as to the factual support for those  
10 claims?

11 A Yes.

12 Q What was that?

13 A That it was weak to non-existent.

14 Q In connection with your investigation into the estate's  
15 claims against the National Bank of Kuwait, did you form a  
16 view as to the voracity of Mr. Choudhri?

17 A Yes.

18 Q What was that?

19 A I did not think I could rely on the voracity of things  
20 Mr. Choudhri told me.

21 Q Have you read the plan that NBK has filed in this case?

22 A Yes.

23 Q Do you understand that the plan reflects a compromise  
24 or settlement of estate claims against the bank?

25 A Yes.

1 Q Do you think that settlement should be approved?

2 A Yes.

3 Q Do you think that settlement is in the best interest of  
4 the estate?

5 A Yes, absolutely.

6 Q Do you think that the funding the bank is providing  
7 under the plan provides more benefit to the estate than  
8 pursuing those claims?

9 A Yes.

10 Q Have you -- during the course of your investigation,  
11 did you form an opinion as to the value of the estate's  
12 claims against the bank?

13 A Yes.

14 Q Did you form a view as to whether that value was more  
15 or less than the value the bank is providing under the plan?

16 A Yes.

17 Q Is it more or less?

18 A I'd say much less.

19 Q Mr. Murray, does the plan incorporate an auction of the  
20 property?

21 A Yes.

22 Q Is that auction going forward?

23 A Yes.

24 Q Does that mean that there's more than one qualified  
25 bidder?

1 A Yes.

2 Q The bank is a qualified bidder?

3 A Yes, by definition.

4 Q Pursuant to the stalking horse agreement?

5 A Yes, and I think bid procedures motion to -- for order,  
6 yeah.

7 Q So I'm going to ask you questions about the auction.  
8 To the extent that there is confidential information that  
9 you feel you can't reveal, then please just tell me that.  
10 But other than the bank, how many qualified bidders are  
11 there?

12 A There is one other bidder.

13 Q And who is that?

14 A It is -- I always say it wrong. I think it's QB Loop  
15 or QB Investments Loop. It's an entity that's represented  
16 by Simon Mayer.

17 Q How much is their bid?

18 A Their bid is \$21 million.

19 Q The property is -- was being marketed by Hilco. Is  
20 that correct?

21 A I should say their qualifying bid is \$21 million. We  
22 have not had the auction.

23 Q And the property is being marketed by Hilco. Is that  
24 correct?

25 A Yes.



1 Q You were here the other day and there was a lot of  
2 questions and testimony concerning the Hilco marketing  
3 process. Do you recall that?

4 A Yes.

5 Q And there were questions and testimony concerning the  
6 Hilco brochure. You recall that?

7 A I do.

8 Q And there was reference in the Hilco brochure to a  
9 minimum overbid amount?

10 A Yes.

11 Q What is the minimum overbid amount?

12 A It was 19,750,000 I think. It starts with a 19.

13 Q And I apologize for the stupidity of this question, but  
14 21 million is more than 19,750,000, correct?

15 A Yes, it is.

16 Q Okay. Do you know whether Mr. Choudhri has any  
17 connection to QB Loop?

18 A I do.

19 Q And does he?

20 A Yes.

21 Q And what is that?

22 A Mr. Mayer told me that Mr. Choudhri's mother is one of  
23 the participants in the investor group that that group  
24 represents. Also, Mr. Anwar Qadeer, who I think organized  
25 that group, had told me -- I sense an objection coming.

1 MR. BURKS: Yeah, I'm --

2 MR. FITZMAURICE: Hasn't come yet though.

3 MR. BURKS: Objection. No personal knowledge.

4 Complete hearsay. He has no personal knowledge of what the

5 -- what, if any, connection there is between Mr. Choudhri

6 and Q whatever. And it's your role, frankly.

7 MR. FITZMAURICE: I'd like to respond to that

8 objection.

9 THE COURT: Which one?

10 MR. FITZMAURICE: The objection that it lacks

11 personal knowledge.

12 MR. BURKS: Hearsay and relevance.

13 THE COURT: I think it's relevant. I certainly

14 think it's relevant. I'll overrule that objection. Whether

15 it's hearsay or not is a different issue.

16 MR. FITZMAURICE: I'll ask a different question,

17 Your Honor.

18 THE COURT: Thank you.

19 BY MR. FITZMAURICE:

20 Q Did anyone tell you that Mr. Choudhri has a connection

21 to QB Loop?

22 MR. BURKS: Hearsay.

23 BY MR. FITZMAURICE:

24 A Yes, he did.

25 Q Mr. Choudhri did.

1 A Yes.

2 MR. FITZMAURICE: Statement by a party opponent,  
3 Your Honor.

4 THE COURT: All right. I'll overrule the  
5 objection.

6 MR. BURKS: All right.

7 BY MR. FITZMAURICE:

8 Q What did he tell you?

9 A During our lunch break on Monday --

10 MR. BURKS: Objection, hearsay.

11 MR. FITZMAURICE: It's --

12 THE COURT: Again, it's -- I'll overrule the  
13 objection. Go ahead.

14 BY MR. FITZMAURICE:

15 A During our lunch break on Monday, he -- I forgot  
16 exactly what he said, but I said, "Why didn't you make a  
17 bid." And he said, "I did. QB Loop is me."

18 Q Mr. Murray, when the bank filed its proposed plan of  
19 liquidation on the docket, was that the first time you had  
20 seen it?

21 A I'm sorry. Repeat the question.

22 Q Sure. When the bank filed the proposed plan of  
23 liquidation of the debtor on the docket, was that the first  
24 time you had seen all that?

25 A No.

1 Q So you had seen it prior to that.

2 A Yes.

3 Q Do you know whether bank's counsel provided your  
4 counsel with direct copies of the plan?

5 A Yes.

6 Q Do you know whether the respective counsel, yours on  
7 the one hand, the bank's on the other, discussed proposed  
8 revisions to the plan?

9 A Yes.

10 Q Do you know whether your counsel made suggested  
11 revisions to the plan?

12 A Yes.

13 Q Do you know whether the plan that's on file reflects at  
14 least some of the suggestions that you or your counsel made?

15 A Not as many as I could like, but yes. At least some.

16 Q Do you know if the original draft plan that you or your  
17 counsel received from the bank provided for a recovery from  
18 Choudhri's or the debtor's former counsel?

19 A I think initially --

20 MR. BURKS: Go ahead.

21 BY MR. FITZMAURICE:

22 A One of the drafts had debtor's former counsel not  
23 considered a trade creditor and I think maybe classified as  
24 an insider or otherwise subordinate to the trade class, but  
25 I don't remember exactly.

1 Q Did you or your counsel ask the bank to classify those  
2 creditors in a manner that they would receive some value  
3 under the plan?

4 A Yes.

5 Q Does the plan so classify those creditors?

6 A Yeah. I thought that exclusion of debtor's prior  
7 counsel from trade -- I didn't see how that was fair to that  
8 creditor group that they provided services for the debtor.  
9 And their side ultimately acquiesced and included them in  
10 the trade clause.

11 Q Do you know whether the debtor's former counsel are in  
12 the Class 5A trade class or if they are in another class?

13 A I don't. I don't remember.

14 MR. FITZMAURICE: Let's -- can we open the --  
15 let's look at the plan.

16 MAN 1: It's the only number. Sorry.

17 MR. FITZMAURICE: You need to plug in I think.  
18 That's what I got. It's all right. Yeah, and just a little  
19 bit so we can see 5A.

20 BY MR. FITZMAURICE:

21 Q So looking at the descriptions here, Mr. Murray, on  
22 Page 12 of the bank's plan, does this refresh your  
23 recollection as to where the debtor's former counsel are  
24 classified?

25 A No, I think I need the definition of trade general

1 unsecured.

2 MR. FITZMAURICE: Can we scroll up, please, to  
3 definition of trade general unsecured?

4 MR. BURKS: Objection to the answer to that  
5 question. The witness has demonstrated that he does not  
6 know, and then the document speaks for itself under the Best  
7 Evidence Rule.

8 THE COURT: I'll overrule that objection.

9 BY MR. FITZMAURICE:

10 Q So Mr. Murray --

11 A I think you need to --

12 Q -- looking the definition of trade unsecured creditors  
13 -- excuse me, looking at the definition of trade unsecured  
14 claims --

15 MR. FITZMAURICE: Keep going down so that the  
16 chart shows.

17 BY MR. FITZMAURICE:

18 A I don't see her firm on here. Can I see the --

19 Q Was it other general unsecured?

20 MR. FITZMAURICE: Can we see the definition of  
21 general unsecured claims?

22 BY MR. FITZMAURICE:

23 A Yeah, it must be that unless her firm is still listed  
24 on the insider claims that are subordinated. Do you have  
25 that definition? The --

1 Q What's that?

2 A -- subordinated claims. Yeah. This -- yeah, I was  
3 misremembering. It was originally subordinated and then it  
4 wasn't I think was how we resolved that.

5 Q Okay. So do you know whether debtor's former counsel  
6 is -- receives value under the plan?

7 A Yes.

8 Q And that's as a result of a request that you made to  
9 the bank?

10 A Yes, that's right.

11 Q In your work as the Chapter 11 trustee in this case,  
12 have you made an assessment of any claims that have been  
13 filed against the estate?

14 A Yes.

15 Q Did you make an assessment of the claim that was filed  
16 by 2425 WL?

17 A Yes.

18 Q You objected to that claim.

19 A I did.

20 Q What's the basis of that objection?

21 A I've got to look at the objection. I don't remember.  
22 I'm pretty sure it was subordination.

23 MAN 1: Page 402?

24 MR. FITZMAURICE: Yeah, I'm not sure I've looked  
25 at that since we found it.

1 BY MR. FITZMAURICE:

2 A If you could just scroll down --

3 MR. FITZMAURICE: Mr. Akuffo, I'll just ask you to  
4 scroll through --

5 BY MR. FITZMAURICE:

6 A -- and I can try to read it.

7 MR. FITZMAURICE: -- slowly please.

8 BY MR. FITZMAURICE:

9 A Try to remember exactly what the basis (indiscernible).

10 MR. FITZMAURICE: So let's stop there.

11 BY MR. FITZMAURICE:

12 A Oh, right. Okay.

13 Q So Mr. Murray, does reading the document here at ECF  
14 402 refresh your recollection as to the basis of the  
15 objection that you filed to the 2425 WL claim?

16 A Yeah. I think we take the position that the asserted  
17 debt and its perfection and its security interest are not  
18 valid for enforcement.

19 Q Does the trustee take the position that there is in  
20 fact no debt owed by the estate to 2425 WL?

21 A Yes. Yeah. I think it was a fake debt.

22 Q I'm sorry. It was a fake debt?

23 A Fake debt.

24 Q Thank you. Have you objected to any other claims --

25 A Yes.



1 Q -- so far? Do you recall any other claims that you  
2 objected to?

3 A I think we -- that are filed.

4 Q That are -- and I'm only asking about the claim  
5 objections that have been filed as of the day, the 19th of -  
6 -

7 A Yeah. I think -- of what we filed, I think we objected  
8 to Mr. Choudhri's personal claim by Jetall Capital, and then  
9 we filed an adversary against Jetall Companies. Which I  
10 think also had filed a claim and the objection is in the  
11 adversary.

12 Q And do you recall what the basis of the adversary  
13 proceeding against Jetall Companies is?

14 A There's a few. There's preferences, fraudulent  
15 transfers, breach of fiduciary duty I'm pretty sure.

16 Q Does the adversary seek equitable subordination?

17 A Yes, I think so. To the extent there was a secured  
18 claim by Jetall Companies.

19 Q Mr. Murray, do you know whether the plan of disclosure  
20 statement filed -- withdrawn. Do you know whether the  
21 voting procedures in connection with the (indiscernible)  
22 plan of liquidation of the debtor called for balance to be  
23 delivered to you or your counsel?

24 A I know I got a solicitation package. I don't know  
25 where I was on the procedures there though.

1 Q Do you know whether ballots were in fact delivered to  
2 you? Whether completed ballots were delivered to you.

3 A Oh, yes. I thought you were talking about the  
4 solicitation. No, the completed ballots, yes.

5 Q Yes, apologize for my -- for the bad question.

6 A Well, not to me. I think Mr. Shannon received those.  
7 Or at least he collected them. I might've been copied on  
8 the email.

9 MR. FITZMAURICE: So I'm going to ask Mr. Akuffo  
10 to pull up a document at ECF 428.

11 BY MR. FITZMAURICE:

12 Q Did your counsel file this ballot summary?

13 A Yes.

14 MR. FITZMAURICE: Can you scroll down please? Go  
15 back to the -- yep, right there.

16 BY MR. FITZMAURICE:

17 Q Does this reflect -- accurately reflect the votes, the  
18 ballots( that were received -- let me start again. I  
19 apologize. Does this accurately reflect the ballots that  
20 were received by your counsel?

21 A Yes.

22 MR. FITZMAURICE: Your Honor, I'd ask the Court to  
23 accept into evidence the document at ECF Number 428.

24 THE COURT: All right. I'll take the ballot  
25 summary into evidence at 428. Thank you.

1 MR. FITZMAURICE: Your Honor, might I take a  
2 moment and see --

3 THE COURT: Sure. Feel free.

4 MR. FITZMAURICE: Thank you.

5 MR. BURKS: Your Honor, may I be excused? Just --  
6 I have --

7 THE COURT: Sure. I plan on breaking in just a  
8 minute.

9 MR. FITZMAURICE: Your Honor, if it helps speed up  
10 the break, I have no further questions for Mr. Murray at  
11 this time.

12 THE COURT: All right. Mr. Murray, why don't you  
13 step down? Now would be a good time to break. Now here's  
14 my only concern. I have someone checking on it as it is. I  
15 don't know whether you want to break for lunch or not. The  
16 problem is I can't guarantee that we can everyone rescreened  
17 to come back into the courthouse. They're checking on that  
18 now. Assuming that they can, and if you can go back out and  
19 then get rescreened coming back in, you guys want to break  
20 for lunch?

21 MR. SHANNON: I think it makes sense.

22 MR. FITZMAURICE: If we can, Your Honor, then yes.  
23 Otherwise I think we'll plow through.

24 CLERK: He's going downstairs to check.

25 THE COURT: Okay. So we'll check. In a just

1 minute we'll have Mr. Baker come back. As long as you can  
2 rescreened I'm willing to give you a break. At least you  
3 guys can go across the street and get in air conditioning.  
4 That would be a huge benefit I'm sure. I don't have that  
5 ability unfortunately. So let's see. And what I'll do is  
6 I'll switch when we come back. I'll come back out and I'll  
7 tell you what we're going to do relative to breaking. I  
8 want to give you a lunch break. I may be limited in what I  
9 can do based on screening, okay? So I'll step down for a  
10 few minutes.

11 MR. FITZMAURICE: Thank you, Your Honor.

12 MR. BURKS: Thank you, Your Honor.

13 CLERK: All rise.

14 (Recess)

15 CLERK: All rise.

16 THE COURT: Mr. Burks, I think that you are up.

17 MR. BURKS: I think I'm up and I'm feeling very  
18 much better than I was before break. Thank you, Judge.

19 THE COURT: You're welcome.

20 MR. BURKS: May I gather my notes and then take  
21 the podium?

22 MR. BAKER: Mr. Burks, I'm disappointed you don't  
23 have a second Astros tie.

24 MR. BURKS: I was thinking of you this morning and  
25 I almost ... I have a close family member who works for the

1 Astros and I have plenty of ties. I'm looking for my work  
2 copy of the plan and I'll be right at the podium, Judge.  
3 Got it.

4 THE COURT: Mr. Burks, you want to project, you  
5 ever project from a particular placed podium?

6 MR. BURKS: From the podium, Mr. Baker?

7 THE COURT: Mr. Baker has to help.

8 MR. BURKS: Should I wait for Mr. Troop, Your  
9 Honor?

10 THE COURT: I think that Mr. Fitzmaurice is more  
11 than capable of handing the matter, so go ahead.

12 MR. BURKS: All right, Judge. Thank you, Your  
13 Honor.

14 CROSS EXAMINATION OF CHRISTOPHER MURRAY

15 BY MR. BURKS:

16 Q Hi, how are you? Still all right?

17 A Yes. Glad you're feeling better too.

18 Q Thank you very much. Let's go back a little bit.

19 Starting with, I'm going to go last to first

20 (indiscernible). There's an auction coming up. It's on  
21 Friday, correct?

22 A Yes.

23 Q How many qualified bids are there?

24 A There are two.

25 Q Who are they?

1 A It's QB Loop Investments, I think that's their full  
2 name, and the bank.

3 Q All right. QB Loop, there was a statement you said  
4 that Mr. Saunders said that is him, that is he, whatever  
5 your statement was. Do you remember that?

6 A Yes.

7 Q Have you done any investigation as to who owns Q --  
8 what is QB Loop?

9 MR. FITZMAURICE: Objection, compound?

10 THE COURT: One question at a time.

11 BY MR. BURKS:

12 Q Who owns QB Loop?

13 A I don't remember who all owns it. It's a group of  
14 investors.

15 Q So, next question is, what is QB Loop?

16 A I think it's a group that was put together for the  
17 purpose of bidding on the building.

18 Q So, but you don't know that. That's your surmise?

19 A No, that's what they told me, I mean in sum and  
20 substance. I did have conversations with, first with Anwar  
21 Qadeer, who is an attorney who said he represented that  
22 group. I'd also spoken with Leonard Simon at one point, who  
23 said he spoke on behalf of that group. And most recently,  
24 Simon Mayer has been representing that group and I've spoken  
25 to him about it.

1 Q But Mr. Ali is not an owner in this investment group?

2 A I don't know.

3 Q If you know whether or not Mr. (indiscernible) is an  
4 investor in that group?

5 A I don't think he is directly an investor. I think Mr.  
6 Mayer told me that he was not directly an investor, but that  
7 his mom was.

8 Q That his who was?

9 A His mother.

10 Q His mother. Did (indiscernible) comply with all the  
11 requirements so far with (indiscernible) instructions?

12 A I think so, yeah.

13 Q And can they put down earnest money?

14 A They did.

15 Q How much?

16 A There's \$2.1 million in escrow.

17 Q All right. So, irrespective of who they know or don't  
18 know, or who's involved in the group, they're a qualified  
19 bidder. Cash?

20 A Oh, absolutely.

21 Q The auction was supposed to take place, I believe,  
22 initially, subject to (indiscernible) yesterday at one  
23 o'clock. Is that correct?

24 A I think that's the earliest it could have happened.

25 Q And why did it not happen yesterday?

1 A I wanted more time to evaluate this.

2 Q And --

3 A Well, I had -- that's not the full answer. The other  
4 answer is I lost the entire day Monday doing the hearing.  
5 So, the time I would have spent on that was spent doing  
6 that.

7 Q (indiscernible)

8 A Yes.

9 Q So, are you taking anymore bids?

10 A Not at the present time, no.

11 Q Do you intend to take more bids at the (indiscernible)?

12 A I don't know.

13 Q When is the auction going to be held, where you sit  
14 now, what time and day?

15 A I've scheduled it for Friday at one o'clock, local  
16 time, Central.

17 Q And where is that taking place?

18 A We're going to do it virtually.

19 Q And who, who can sign in or link in to watch the  
20 bidding process?

21 A I don't think I've determined that yet, probably just  
22 the parties who are qualified.

23 Q All right. So, for example, can Mr. Choudhri be muted  
24 and watch?

25 A I suppose anybody could watch the auction. I don't



1 have a problem with that. I, I don't want any interference  
2 with the auction.

3 Q Exactly. So, you can, if you do it remotely, you can  
4 have a situation where no one can see Mr. Choudhri, no one  
5 can hear Mr. Choudhri, right?

6 A I suspect we could do that. I know Hilco is going to  
7 handle the electronic logistics, so I don't know exactly  
8 what system they use. But I imagine that's possible, and if  
9 so, I wouldn't mind anyone watching.

10 Q Thank you. I think Mr. Choudhri would like to watch  
11 it.

12 A Yeah, I would have no problem with that.

13 Q I, personally, would rather watch the Astros game than  
14 that but ... (indiscernible) still going backwards. You made  
15 decisions regarding the validity of the Choudhri claims,  
16 correct?

17 A Are you talking about his proof of claims?

18 Q No, I'm talking proof of claims right now, yes.

19 A Okay, yes.

20 Q And you objected to it.

21 A Yes, I objected to -- yes.

22 Q And you made decisions regarding three sets, or three  
23 pieces of litigation also, correct?

24 A I think so.

25 Q Right. And of those three pieces of litigation, is it

1 fair to say, or isn't it true, that you're basically  
2 releasing them to MPK for 3.7 million or less?

3 A Releasing the Choudhri claims or -- I misunderstand.

4 Q So, there are three pieces of litigation. It's the two  
5 lawsuits that have been admitted into evidence, and it's the  
6 (indiscernible) claim, that (indiscernible) --

7 A Okay, you're saying the claims against the family?

8 Q Yes.

9 A Right, okay.

10 Q And you're releasing those to the extent you can,  
11 correct?

12 A If the plan is confirmed, they're released as part of  
13 the plan, yes.

14 Q Right. And what is the consideration that the estate  
15 receives for those releases of those three actions?

16 A I consider it to be everything the estate gets from the  
17 plan. So, that's the funding that comes in that will cover  
18 the admin expenses, the carveout, essentially, that funds  
19 the trade creditors and the money that's for the general  
20 unsecureds. And also, there's some seed funding for the  
21 litigation trust. That's the ... most of it, yeah.

22 Q And Mr. Carter has testified that he thought that was  
23 about 3.7 million. Is that your understanding?

24 A I think he said that's his estimate of how much cash  
25 the bank would have to put in if their credit bid of 18.6

1 prevailed. That's what I understood him to stay.

2 Q And is that your understanding?

3 A Yeah. I mean, I don't know exactly what the total  
4 admins will be, so it's just an estimate, but that sounds  
5 about right.

6 Q So, it's fair to say the bank gets the right to credit  
7 bid for 18.6, they've got a full release of everything  
8 that's out there, and (indiscernible) 3.7.

9 A Not everything. They get a release of the claims the  
10 estate has; other parties might have claims.

11 Q Unless the release in the plan is written the way I  
12 read it, right? I'm reading it as a full release. Are you?

13 MR. FITZMAURICE: Objection, Your Honor. The plan  
14 speaks for itself. Your Honor will interpret its breadth  
15 and scope and terms.

16 THE COURT: I'll sustain the objection. Thank  
17 you.

18 BY MR. BURKS:

19 Q You said you spoke to Jerry Alexander, correct?

20 A Yes.

21 Q And what did you speak to him about?

22 A We spoke to him about the lender liability claims.

23 Q Did he tell you what his damages model was on that  
24 lender liability claim?

25 A I ... numbers, I don't remember that, no.

1 Q All right. So, you don't know what he was assessing  
2 the value of his action?

3 A I mean, I know he thought it was potentially very  
4 valuable, big number, but I don't remember a number.

5 Q Thirty-five million? Does that sound familiar?

6 A It doesn't, but it could be.

7 Q All right. And have you ever tried a lender liability  
8 claim yourself?

9 A As an attorney?

10 Q Yes.

11 A No, no I ...

12 Q Are you --?

13 A I've objected to bank claims before, but I've not ...  
14 lender liability, no.

15 Q Fair enough. Are you aware that ... let's say it  
16 differently. Isn't it true that Jerry Alexander has a  
17 reputation for being an accomplished lender liability claims  
18 attorney?

19 A Honestly, I had not heard of him before this case.

20 Q So, you don't know what his reputation is?

21 A That's right, I don't.

22 Q You now know.

23 A I've been told that people hold him in high regard and  
24 that he's succeeded in one lender liability case. That's  
25 pretty much the extent of it.

1 Q All right. But that was after the plan was filed.

2 A I don't know when I came to know that, but that was  
3 certainly after I met him and tried to find out who he was.  
4 I don't remember chronologically, whether that was before or  
5 after the plan.

6 Q Did you speak with Jeff Steidley, an attorney?

7 A I don't think so.

8 Q All right. Are you aware that Jeff Steidley is the  
9 attorney who has filed a State Court lawsuit that's been  
10 removed and subject to remand, regarding the enforceability  
11 and the settlement agreement?

12 A That sounds right, but I don't really remember one way  
13 or the other.

14 Q Have you spoken to -- you haven't spoken to him?

15 A I don't think so.

16 Q All right.

17 A Personally, I don't remember talking to him.

18 Q Do you know what his theories are on the lawsuit  
19 regarding enforceability and regarding damages on the  
20 settlement? Do you know what his theories are?

21 A I'm not sure I understand them very well.

22 Q You don't understand them?

23 A No.

24 Q Okay. James Wetwiska, have you spoken to him?

25 A Wetwiska?

1 Q Is that how you pronounce his name?

2 A That's how you pronounce his name, Wetwiska.

3 Q Mr. Wetwiska, have you spoken to him?

4 A Yes.

5 Q And what did you speak to him about?

6 A Same thing. Oh, no, I didn't speak to him about the  
7 theories of why the settlement agreement wouldn't be valid.  
8 I talked to him about the bank's conduct that might underlie  
9 claims.

10 Q And is there another claim that's currently on file  
11 against National Bank of Kuwait that the ... is, in fact, on  
12 file, that you considered?

13 A I'm not sure what you're referring to.

14 Q All right. Let me be less vague on that, because that  
15 was pretty vague. Are you aware that Mr. (indiscernible)  
16 filed an adversary proceeding, pending in this Court, for  
17 the equitable subordination of MPK's lien to the purported  
18 second lien of 2425 WL?

19 A Yes, I remember. Yes.

20 Q All right. Well, that was the other action I was  
21 talking about. Are you familiar with that action?

22 A As I sit here today, not in detail, no.

23 Q So, if I asked you what was the basis of that  
24 complaint, for that ... for the claim of subordination, could  
25 you tell me?

1 A Yeah, I can tell you my recollection generally.

2 Q Yes.

3 A It was that the bank behaved badly and their lien  
4 deserves to be subordinated because of that.

5 Q You stated that you concluded, and you objected to the  
6 claim of 2425 WL, of which that cause of action is  
7 predicated, obviously. You objected to it, correct?

8 A Yes.

9 Q And you objected to it, as I understand, because, isn't  
10 it true that you think the lien is fictitious?

11 A I think (indiscernible) was fictitious?

12 Q And therefore the liens are fictitious.

13 A Yeah.

14 Q Right now, is that lien on file?

15 A I don't remember.

16 Q Has it been voided?

17 A I don't know. I don't remember.

18 Q Okay. And what was your basis for determining that the  
19 lien was voidable and/or the (indiscernible) debt was  
20 fictitious? What did you base that on?

21 A It was based on some irregularities in the documents  
22 that appeared that the debt instruments were created after  
23 the debt would have existed, and it contradicted some other  
24 documents in the case, is my recollection.

25 Q And was the lien reported and is it still reported?

1 A I don't know. I don't remember that.

2 Q All right. You spoke with Mr. Ali Choudhri, correct?

3 A Yes.

4 Q And I think you testified that you find him to be, in  
5 all ways, not credible. Is that correct?

6 A I didn't say that.

7 Q How do you find him to be? Do you find him to be  
8 credible?

9 A I was asked about the veracity of what he says, and I  
10 says, I said I do not think I can rely on the veracity of  
11 the things he says. I don't know if he's lying all the  
12 time, none of the time. But I have doubts when he says  
13 things, that they are true.

14 Q I understand. Did you receive an email, personally, or  
15 from your counsel, where Mr. (indiscernible) or Mr. Choudhri  
16 figured -- and I'll let you answer yes or no; I'm using the  
17 word tendered on purpose -- when Mr. Choudhri tendered  
18 \$700,000 cashier's check to buy claims from you against MPK?

19 MR. FITZMAURICE: Objection to the use of the term  
20 tender. It calls for a legal conclusion as to whether that  
21 standard has been satisfied.

22 THE COURT: I'll let it be used in the generic  
23 sense of tender. Go ahead, answer the question.

24 BY MR. BURKS:

25 A I saw an email that had, as an image attached to it,



1 what looked like a cashier's check for \$700,000.

2 Q All right. And what did you do with that tender --

3 that letter -- I'll re-ask. What did you do with the email

4 that had -- well, tell me what the email was. It was a copy

5 of, it was a copy of a cashier's check for how much?

6 A It was \$700,000 was the amount on that image of a

7 check.

8 Q And what else came to you with the image of the check?

9 A I think it was a proposal from Mr. Choudhri, or one of  
10 the entities, I don't remember, but to buy the claims of the  
11 estate against the bank.

12 Q For how much?

13 A It was an offer for \$700,000.

14 Q Right. Did you respond?

15 A I don't know if I responded definitely to it yet. I  
16 mean, I haven't accepted that.

17 Q Have you rejected it?

18 A I don't know if I have. I don't, actually don't think  
19 I have yet.

20 Q Do you believe that it's a valid tender of money?

21 A I don't know.

22 Q If it was, would you be inclined to accept it?

23 MR. FITZMAURICE: Objection, calls for  
24 speculation.

25 THE COURT: I'll sustain the objection,

1 speculation.

2 MR. BURKS: All right. May I approach, please?

3 THE COURT: No. I mean, you want to tell me why -  
4 - typically, we don't approach the witness.

5 MR. BURKS: I have the original check and I'm  
6 asking if (indiscernible) the original cashier's check --

7 THE COURT: There's the ELMO right there, you can  
8 show it to me. Thank you. It's right there.

9 BY MR. BURKS:

10 Q Sir, do you see on the screen what's in the projector,  
11 ELMO projector?

12 A Yes, and that's the image that was in the email. I  
13 think the email image was black and white, but that looks  
14 like what I saw.

15 Q All right. So, the document that I put down here, can  
16 we agree, that kind of looks like an official cashier's  
17 check, payable to you.

18 MR. FITZMAURICE: Objection. Objection to the use  
19 of the term cashier's check. I think that lacks foundation.

20 THE COURT: I'll sustain the objection. It looks  
21 like a check, obviously. You can ask the next question.

22 BY MR. BURKS:

23 Q Does this appear to be an original official check  
24 written on, written by Metro City Bank?

25 A Yeah. It looks like a check and that's what it says.

1 Q Who is the payee?

2 A Me.

3 Q Yeah. For how much?

4 A It's \$700,000.

5 Q Purpose, it reads -- can you read the purpose?

6 A It says, "Purchase of estate claims against MPK."

7 Q You now -- dated June 14th, 2024, correct?

8 A I see that.

9 Q Now, do you believe now that Mr. Choudhri seriously  
10 intends to pay you, would like to pay you \$700,000 for the  
11 purchase of the claims against MPK?

12 MR. FITZMAURICE: Objection, Your Honor, lacks  
13 foundation as to Mr. Choudhri's intent. His name appears  
14 nowhere on this image.

15 MR. BURKS: I actually asked him does he now  
16 believe.

17 THE COURT: Excuse me, Mr. Burks. Ask the  
18 question again.

19 BY MR. BURKS:

20 Q You stated (indiscernible), apparently I need more  
21 predicate, Judge. You stated that this appears to be the  
22 document from which, the image you received, with that email  
23 offer.

24 A Yes.

25 Q All right. Based on seeing this official check, right

1 now in Court, are you, do you now believe that Mr. Choudhri  
2 is serious about paying you \$700,000 cash to buy the claims  
3 of MPK?

4 MR. FITZMAURICE: Objection, Your Honor, lacks  
5 foundation as to official check and Mr. Choudhri. I mean, I  
6 see the words on there, but I think counsel is using that  
7 for a different purpose. And also, as to Mr. Choudhri,  
8 whose name does not appear anywhere on the image.

9 MR. BURKS: Response.

10 THE COURT: Go ahead.

11 MR. BURKS: So, Mr. Murray just testified that  
12 this is the, appears to be the document from which the image  
13 included in this settlement offer from Mr. Choudhri, and  
14 he's testified to that; it was from Mr. Choudhri or one of  
15 his entities. And this is the image that was included with  
16 it.

17 THE COURT: I'll just note for the record, I'll  
18 let him answer the question, and I'll just note for the  
19 record that the remitter is not Mr. Choudhri but BPH  
20 Acquisition, LLC, whoever that happens to be. All right?  
21 Go ahead.

22 BY MR. BURKS:

23 Q Do you now believe that Mr. Choudhri is serious about  
24 paying you \$700,000 for the claims against MPK?

25 A I believe he's serious about wanting the claims. I

1 have no idea if this check is real or not. I have no reason  
2 to think it's not, but until I deposit it and it appears in  
3 my account, I ... I don't know how to answer the question  
4 other than that.

5 Q Sure, fair enough. Is it your understanding that  
6 confirmation of the plan today would preclude you from  
7 accepting an offer of \$700,000 to buy those claims?

8 A Yes.

9 Q Okay.

10 MR. BURKS: Your Honor, may I take this off of the  
11 ELMO?

12 THE COURT: Yeah sure. It's off. I turned it  
13 off. Don't lose it.

14 BY MR. BURKS:

15 Q Going back to your causative action, did Mr. Wetwiska  
16 tell you, or give you a damages model for the action, which  
17 is model for the action that he'd like to bring in terms of  
18 enforcing the suit, which is about the settlement agreement?

19 A I don't --

20 MR. FITZMAURICE: Objection. I think that lacks  
21 foundation.

22 THE COURT: I'll let you answer the question, go  
23 ahead.

24 BY MR. BURKS:

25 A I don't remember getting a damage model from Mr.

1 Wetwiska.

2 Q All right. Do you have a general idea what he thinks  
3 of the claim after your conversation with him?

4 A No, no different from my recollection of what Mr.  
5 Alexander said. Big damages, but I don't remember a number.

6 Q There he speaks in terms of huge damages, correct? All  
7 right. And let the record reflect that the witness nodded.

8 A In the affirmative.

9 Q Have you read the lawsuit, which is at ECF -- actually,  
10 if you've read it. I don't want to ask you to testify  
11 (indiscernible) at this point. Have you read the lawsuit  
12 which is at ECF ... or maybe I lost it (indiscernible) ... ECF  
13 502-6. Is the second amended (indiscernible) petition, and  
14 it's the one that (indiscernible) talked to you about. It's  
15 the one that Jeff Steidley talked to you about, correct?

16 A I don't remember talking to Mr. Steidley. I'm pretty  
17 sure I reviewed that pleading though.

18 Q All right. Are you aware that that complaint has two  
19 very distinct causes of action within it?

20 A I really don't remember the pleading.

21 Q All right, fair enough.

22 A I remember it exists, I don't remember it.

23 Q Are you aware, or do you know, that that pleading  
24 involves two tax liens?

25 A That sounds, I think that sounds right.

1 Q All right. Are you aware that the Plaintiffs' position  
2 is, is that if the settlement agreement failed, that the tax  
3 liens would be returned to Ali Choudhri?

4 A Yeah, my ... yes.

5 Q All right. Doesn't the claim, though, provide for the  
6 tax liens to be satisfied through the plan, and paid off?

7 A Yes.

8 Q If the tax liens are owned by Mr. Ali Choudhri, why  
9 isn't he entitled to the value of those tax liens?

10 MR. FITZMAURICE: Objection, Your Honor, calls for  
11 speculation. Also, calls for a legal conclusion as to the  
12 results of that lawsuit.

13 THE COURT: I'll sustain the objection.

14 BY MR. BURKS:

15 Q Does the lawsuit sue MPK for the value of those two tax  
16 liens?

17 A I don't remember the prayer in the lawsuit.

18 Q All right. But it's of record. (indiscernible) can  
19 just read it. What's the amount owed on those two tax  
20 liens?

21 A Well, I'm a little confused because there's lots of tax  
22 liens (indiscernible).

23 Q There are two tax liens that are being paid through the  
24 plan.

25 MR. FITZMAURICE: Objection, Your Honor,

1 mischaracterizes the plan.

2 THE COURT: I'll sustain the objection.

3 BY MR. BURKS:

4 Q The two tax liens that are the subject of the  
5 litigation, the complaint at ECF 502-6, what are the amounts  
6 of those two loans?

7 A I don't remember.

8 Q Would it surprise you if their face value of \$4 million  
9 combined?

10 A Sure.

11 Q Okay. Let me move along. When you were negotiating  
12 with the bank, in the manner that you testified, did you  
13 have any other option than what the bank was offering and  
14 agreeing to?

15 A It depends on what point in time you're talking about.

16 Q The point in time in which the plan that's filed today,  
17 that we're considering, was filed.

18 A At that time, I recall somebody on the Debtor's side  
19 was also either talking about or had filed another plan.  
20 So, there was that. I understand there was an exclusivity,  
21 so there might have been other plans. I mean, early on I  
22 didn't know.

23 Q Were there?

24 A Other than the five or six filed by the Debtor's side,  
25 no.



1 Q Right. And you talked about -- and it's a big document  
2 (indiscernible). And you said, hey, I want a cap on credit  
3 (indiscernible), correct?

4 A I know, I know I wanted one, and I know we talked about  
5 that with the bank and asked if they would do that.

6 Q Did you have any bargaining power to get that  
7 accomplished?

8 A Yeah, some.

9 Q So, why wasn't it accomplished? Why wasn't there a  
10 cap? You wanted it.

11 A I wanted all general unsecureds to get paid in full. I  
12 didn't get that either.

13 Q Did you agree that ... did you want more money for the  
14 release?

15 A I wanted as much money as I could get. At different  
16 times I asked for more.

17 Q And what was your bargaining power, or leverage, to get  
18 you (indiscernible)?

19 A Well, a couple of things. I mean, I have the claims  
20 against MPK, that if, for nothing else, has some nuisance  
21 value to the bank; no bank wanted a release, so they have to  
22 give you something for that.

23 Q Nuisance value?

24 A Yeah.

25 Q Nuisance value?

1 A I said if nothing else. I think they're worth more  
2 than nuisance value. I don't think they're worthless  
3 claims. I don't think they're worth as much as you think  
4 they're worth, or (indiscernible).

5 Q Did Mr. Alexander offer to try the case over on  
6 (indiscernible)? Did he tell you he'd do it?

7 A He asked me to hire him, yes.

8 Q And what were the terms of his proposed engagement?

9 A He said he would do it on, I think, full contingency, I  
10 think a third. But I don't ... I think it was a third.

11 Q What about Mr. Steidley or Wetwiska? Do you know what  
12 their terms of employment or engagement are?

13 A I don't remember anything about Steidley. I'm pretty  
14 sure Wetwiska said he was uninterested in representing the  
15 estate.

16 Q All right. Did Steidley, so you don't recall Steidley  
17 offering to represent the estate and do it for a full  
18 continency, no money down?

19 A I don't remember one way or the other.

20 Q Okay. Now, the (indiscernible) subordination agreement  
21 case, there is a pending motion in front of Your Honor, Jeff  
22 Norman, I guess His Honor, Judge Norman, and that's filed by  
23 Mr. Steve Sather.

24 A That's the claim you were talking about earlier?

25 Q Right.

1 A Okay.

2 Q And that's filed by my co-counsel for 2425 WL, correct?

3 A Yes.

4 Q And there's a motion pending to allow the Creditor,

5 2425 WL, to bring this, correct?

6 A I don't know the current status of the motions

7 (indiscernible).

8 Q Did you file the suit?

9 A Mr. Sather's suit?

10 Q Yes.

11 A No, I --

12 Q Did you file the cause of action?

13 A No.

14 Q All right, so you didn't file equitable subordination  
15 cause of action.

16 A Wait --

17 Q Did you file a complaint for equitable subordination?

18 A Which lien, against who? There's a lot of liens in  
19 this case and there's a lot of claims that they should be  
20 subordinated.

21 Q Did you file a complaint for equitable subordination of  
22 the MPK lien, subordinate to 2425 WL?

23 A Did I file a claim to subordinate the bank's lien? No,  
24 I don't think so.

25 Q But there's, my co-counsel for 2425 WL did, correct?

1 A Right.

2 Q And do you oppose him bringing that lawsuit?

3 A No.

4 Q Will he be able to bring it if this plan is confirmed?

5 A I don't know.

6 Q It's your claim you're releasing, correct?

7 A If it's my claim and I'm releasing it, he can't bring  
8 it. I think he has a theory that he has some sort of  
9 independent standing or independent claim, and I don't  
10 really care about it in our creditor dispute that is, you  
11 know, (indiscernible).

12 Q Right. Fair enough. What's the value of that  
13 subordination claim in your bid?

14 MR. FITZMAURICE: Objection, foundation.

15 THE COURT: I'll sustain it if it's foundation.

16 If you want to lay a foundation, please do.

17 BY MR. BURKS:

18 Q In approving this claim, and say that you approve this  
19 claim, that you formed a damages model or an effect, a model  
20 of the effect of this suit, against MPK, what's the value of  
21 that suit?

22 A I didn't approve of them. I said, as I sit here today  
23 I supported it as the only plan that's available. So, you  
24 want to know if I ... an advantage model of the subordination  
25 claim?

1 Q Or an effect model, yes, sir.

2 A I considered the effect but ...

3 Q (indiscernible) wins MPK is subordinate to 2425 WL  
4 (indiscernible), right?

5 MR. FITZMAURICE: Objection, calls for  
6 speculation.

7 THE COURT: I'll sustain the objection.

8 BY MR. BURKS:

9 Q Are you aware that the requested relief in the  
10 complaint is to put the 2425 WL lien ahead of the MPK lien?  
11 Are you aware of that?

12 A Not specifically, no, but it sounds like the goal of  
13 the subordination claim.

14 Q And did you consider that in determining whether to  
15 sell all your claims for \$3.7 million?

16 MR. FITZMAURICE: Objection, you know,  
17 mischaracterizes the witness's testimony --

18 MR. BURKS: I actually asked him what he  
19 considered.

20 THE COURT: I'll sustain their objection. I think  
21 it does misclassify the testimony. Ask another question.

22 BY MR. BURKS:

23 Q Is the ... so, how does the subordination suit filed by  
24 Mr. Sather, impact your decision to accept \$3.7 million?

25 MR. FITZMAURICE: Objection, lacks foundation.

1 THE COURT: I'll overrule the objection.

2 BY MR. BURKS:

3 A I don't know.

4 Q Fair enough. How many breach of contract cases have  
5 you personally tried?

6 MR. FITZMAURICE: Objection, relevance, Your  
7 Honor. It's a confirmation of the bank's plan.

8 MR. BURKS: He's making a business decision and  
9 I'm trying to understand the foundation for the basis of  
10 that decision. His business decision is to support the plan  
11 and his business decision was to agree --

12 THE COURT: He's already testified as to why his  
13 business decision supports the plan. If you want to attack  
14 that testimony, you can. But I think that that's not a  
15 proper question and I'll sustain the objection.

16 BY MR. BURKS:

17 Q You've read the second amended (indiscernible)  
18 petition; it's the one on the lawsuit involving the tax  
19 liens, and also the validity of the settlement agreement.  
20 You've read that, correct?

21 A Yeah, I'm sure at some point I've read it, I just  
22 wanted (indiscernible).

23 Q Sure. And you testified as to the investigation and  
24 inquiry you made regarding that, right?

25 A Yes.

1 Q Have you ever tried a case like that?

2 MR. FITZMAURICE: Same objection, Your Honor.

3 THE COURT: I'll sustain the objection. Thank  
4 you.

5 MR. BURKS: May I have a moment to make sure that  
6 I've asked all the questions I intended to ask?

7 THE COURT: Certainly, Mr. Burks.

8 BY MR. BURKS:

9 Q On the plan, you've been very forthright as to what's  
10 happening, I believe, on Friday, and I appreciate it,  
11 especially if you can have it muted, where people can  
12 actually, like Mr. Ali Choudhri, can watch the bidding  
13 process. You've talked about the bidding, the auction  
14 that's going to occur on Friday, correct?

15 A Yes.

16 Q If the cash bid is higher than the highest credit bid,  
17 are you going to take the cash bid or the credit bid?

18 MR. FITZMAURICE: Objection, Your Honor, calls for  
19 speculation about some event that theoretically might happen  
20 in the future.

21 THE COURT: I'll overrule the objection. Go  
22 ahead.

23 BY MR. BURKS:

24 A Probably, but there's other things that might happen,  
25 so I can't say for sure, but generally speaking, yes, I'll

1 take the higher bid.

2 Q Any bid you accept, of course, is tradition  
3 (indiscernible). They've only paid you \$2 million. So, if  
4 another bid is the highest bid, they'd still have to pay the  
5 balance and lose it, right?

6 A Oh, yeah.

7 Q Sure.

8 A They'd (indiscernible) close.

9 Q If the credit bid is not successful, what is your  
10 understanding regarding the bank's right to releases? Do  
11 they still get the release?

12 A If the plan is confirmed, yes. The releases come from  
13 the plan, is my understanding.

14 Q Right. If their credit bid is unsuccessful, then they  
15 still owe you \$3.7 million.

16 MR. FITZMAURICE: Objection, Your Honor. The plan  
17 speaks for itself, and "Owe you \$3.7 million,"  
18 mischaracterizes the nature of the plan.

19 THE COURT: I think it does. Ask the question a  
20 different way, perhaps.

21 MR. BURKS: Yeah, all right.

22 BY MR. BURKS:

23 Q If the credit bid is not successful, does MPK still owe  
24 you (indiscernible) liquidating trust \$3.7 million?

25 A Sort of. And my --



1 Q Go ahead, because I don't know the answer to this.

2 A There is money from the sale of the bank's collateral  
3 that some cash bidder will pay at closing. And that money  
4 will, under the plan, go first to the tax liens, then to the  
5 admins. And that's money that, in a sense, is the proceeds  
6 of the bank's collateral, so they are kind of paying it.

7 That's why I say sort. Do they have to come out of pocket?

8 There might be some strange scenario where that happens,  
9 because I think they're backstopping the admins under the  
10 plan, whether there's a credit bid or not. But that seems  
11 really unlikely, because their credit bid is high enough  
12 that the cash bid would recover those expenses. That's how  
13 I understand the bid.

14 Q (indiscernible) isn't it true that you made a decision  
15 not to market test the value of those three lawsuits that  
16 I've been talking about in (indiscernible)? (indiscernible)  
17 for sale (indiscernible).

18 A I have not pursued an auction of the causes of action.

19 Q Why not?

20 A Because the value I get from trading those for a  
21 release as part of the plan, in my view, is a much better  
22 and more solid outcome for the estate and its creditors.

23 Q But not (indiscernible) is right, correct?

24 MR. FITZMAURICE: Objection, Your Honor, lacks  
25 foundation.

1 THE COURT: I'll sustain the objection. Thank  
2 you.

3 BY MR. BURKS:

4 Q If the damage models that you've testified to that you  
5 understand being huge -- and I did that so I can get back to  
6 it -- it's a huge ... if the damage models are right though,  
7 wouldn't the amount you covered be considerably higher than  
8 \$3.7 million?

9 MR. FITZMAURICE: So, Your Honor, lacks foundation  
10 as to damage models, also mischaracterizes the witness's  
11 testimony and is otherwise misleading.

12 THE COURT: Let's say what he did say. He said he  
13 hadn't seen any damage models. So, for you to ask him about  
14 damage models he hasn't seen, he didn't testify the way your  
15 question, basically, is formulated. So, I'll sustain he  
16 objection. If you ask in a different way you can. I know  
17 what he testified to, but he testified that he hadn't seen  
18 any damage models; they weren't shared with him.

19 MR. BURKS: Thank you, Judge.

20 BY MR. BURKS:

21 Q You investigated the causes of action, correct?

22 A Yes.

23 Q You got to release them -- on the one hand, here we go,  
24 I'm holding my left hand out -- on the one hand, you're  
25 going to release them for \$3.7 million, right?

1 A Right. I continue to disagree with the way you're  
2 describing this but --

3 Q How would you describe it?

4 A Under the plan, I'm releasing the claims. What I get  
5 under the plan, is what I get under the plan. Somebody said  
6 it, and likely to be 3.7 million; in a credit bid scenario  
7 it could be a different number, that's why -- but when you  
8 say 3.7, I understand you to mean what the estate gets out  
9 of this plan. And yes, I'm releasing the claims under the  
10 plan.

11 Q In a credit bid scenario, will you actually get \$3.7  
12 million cash, or will you get considerably less?

13 MR. FITZMAURICE: Objection, Your Honor. The plan  
14 speaks for itself.

15 THE COURT: I'll sustain the objection, it speaks  
16 for itself. We're don't have to argue what the plan says,  
17 because the plan is -- it says what it says, Mr. Burks, and  
18 I can read.

19 BY MR. BURKS:

20 Q Whatever the plan says here, the alternative would be,  
21 though, to either try and market those causes of action  
22 independently, correct. Would that be an alternative?

23 A I suppose that's possible, sure.

24 Q And what would you expect to get from that?

25 A Less.

1 Q Why?

2 A Because I don't think the claims are worth much to  
3 anyone other than the party, because they're worth a lot,  
4 and that party made an offer. That's why the claim was in  
5 an amount that was less than what I believe the estate gets  
6 out of the claim.

7 Q But there's another alternative sir, is there not?  
8 Don't release them and let these attorneys, who are offering  
9 to do it on a full contingency, try the case. Isn't that an  
10 alternative?

11 A It is something else that could happen, yes.

12 Q What is the truest way to determine the validity of a  
13 piece of litigation? Is it to try it?

14 A If the only thing you care about is rolling the dice  
15 and seeing if you hit snake eyes, that's a thing you can do.  
16 That's not what I'm doing here. I'm trying to make  
17 decisions that are in the best interests of the estate.

18 Q If you don't sell it for \$3.7 million, those three  
19 actions, have you formed an opinion, if you went forward  
20 with them, have you formed an opinion as to how much MPK  
21 would offer to settle?

22 MR. FITZMAURICE: Objection, Your Honor,  
23 mischaracterizes the witness's testimony of the plan.

24 THE COURT: I'll sustain he objection.

25 BY MR. BURKS:

1 Q Can you form a valid business decision without  
2 determining what you could get in settling if you brought  
3 the claims yourself?

4 MR. FITZMAURICE: Objection, Your Honor,  
5 mischaracterizes the witness's testimony. He's testified  
6 that he did, in fact do that.

7 THE COURT: I'll sustain he objection.

8 BY MR. BURKS:

9 Q So, based on the objections of MPK's counsel, the only  
10 thing that we have for your consideration, is that true, is  
11 releasing the claims to MPK for \$3.7 million? I mean,  
12 that's it.

13 MR. FITZMAURICE: Objection, Your Honor, as to the  
14 predicate of the question, that it somehow benefits the  
15 estate and entirety gestalt of objections by MPK's  
16 (indiscernible).

17 MR. BURKS: I'm going to ask him what his opinion  
18 is, because it's his judgment that he's testified about.

19 THE COURT: I think he's testified as to what his  
20 judgment was and how he got there. I think the question  
21 mischaracterizes his prior testimony. So, if you want to  
22 ask another question, Mr. Burks, you can, but I've listened  
23 to all of his testimony. I'm listening to your questions.  
24 I think your questions are not a true indication of what he  
25 previously testified to. And I can read from my notes back

1 to you what I think he said, because they're right here, but  
2 I don't think that's my job, okay.

3 MR. BURKS: It's not your job and (indiscernible).

4 THE COURT: So, ask a question within the law.

5 Thank you.

6 MR. BURKS: I've asked all the questions in that  
7 area, Judge. Thank you.

8 THE COURT: Thank you.

9 BY MR. BURKS:

10 Q So, the final question is, just so I understand, your  
11 business judgment is that there is no need to market test  
12 the sale or the litigation of these claims, because \$3.7 is  
13 the most you think you can get.

14 MR. FITZMAURICE: Objection, Your Honor,  
15 mischaracterizes the witness's testimony.

16 THE COURT: It does mischaracterize the testimony.  
17 Ask another question. He never testified to that.

18 MR. BURKS: (indiscernible) no further questions,  
19 Your Honor.

20 THE COURT: Thank you. Mr. Baker?

21 MR. BAKER: No questions.

22 THE COURT: Mr. Shannon, I'll come to you, just  
23 because you said you might want to participate.

24 MR. SHANNON: No questions, Your Honor.

25 THE COURT: All right, thank you, Mr. Fitzmaurice.

1 MR. FITZMAURICE: Thank you, Your Honor.

2 REDIRECT EXAMINATION OF CHRISTOPHER MURRAY

3 BY MR. FITZMAURICE:

4 Q Mr. Murray you were asked questions about the equitable  
5 subordination claim filed by 2425 WL against the bank. Do  
6 you recall that?

7 A Yes.

8 Q Do you recall that the bank filed a motion to dismiss  
9 the complaint in that case?

10 A I don't. But that sounds right, but I don't really  
11 remember what the status of that litigation is.

12 Q Similarly, do you not recall whether or not that motion  
13 to dismiss was granted?

14 A I just don't remember, no.

15 Q Do you know whether 2425 WL has filed a motion, has  
16 filed an application with the Court seeking to assert estate  
17 claims?

18 A Yes.

19 Q And you oppose that application, correct?

20 A Yes, I do oppose it.

21 MR. FITZMAURICE: Your Honor, I'm going to give it  
22 another shot.

23 THE COURT: Sure, go ahead, you're connected.

24 MR. FITZMAURICE: Thank you.

25 BY MR. FITZMAURICE:

1 Q So, Mr. Murray is showing me the document at ECF 534.

2 A Yes.

3 Q That's the objection you filed to the 2425 WL  
4 application to pursue estate claims?

5 A Yeah, I recognize that.

6 Q Mr. Burks was asking you questions about a \$700,000 --  
7 let's just call it a check for purposes of these questions --  
8 -- do you recall those questions?

9 A Yes.

10 Q Do you know the amount of the tax liens that have been  
11 filed in this case?

12 A The ones filed, the ones by the taxing authorities, not  
13 the ones that were purchased or traded later, yes.

14 Q Do you know about the approximate amount of those?

15 A It's over two million. I don't know exactly.

16 Q So, that's more than 700,000.

17 A Yes.

18 Q And does the indicated plan call for those tax liens to  
19 be paid in full?

20 A Yes.

21 Q Is there also a tax lien against the property that's  
22 currently held by ... and we'll call it Caz Creek or  
23 (indiscernible)?

24 A Yes.

25 Q Do you know the approximate amount of that tax lien?



1 A I don't. It's more than 700,000, to be sure, but I  
2 don't remember.

3 Q And do you know if that tax lien is paid off in full  
4 under the bank's plan?

5 A Yes, it is.

6 Q The bank's plan also pays off administrative expenses  
7 in full, correct?

8 A Yes.

9 Q It makes a cash payment to a certain amount of secured  
10 creditors. Is that right?

11 A Yes, to cash creditors.

12 Q And it funds a liquidation trust?

13 A Yeah, that was the second (indiscernible).

14 Q As compared to \$700,000, do you have a sense of the  
15 magnitude, as a comparison, of the payments the bank is  
16 making under the plan?

17 A Yes.

18 Q Is it about five times as much?

19 A Well, it's 3.7 or more versus 700, so, yeah a little  
20 more than five times, at least.

21 Q Counsel was asking you whether you spoke to an attorney  
22 named Jeff Steidley. Do you recall those questions?

23 A I do.

24 Q Did Mr. Choudhri or anyone on any side ask you to talk  
25 to Mr. Steidley?

1 A I just don't remember. I don't remember that name and  
2 those discussions.

3 Q In connection with the determinations that you've made  
4 in this case, without telling me the contents of it, have  
5 you sought legal advice?

6 A Yes.

7 Q And does the legal advice that you've received from  
8 your counsel form part of the basis for the conclusions that  
9 you've reached?

10 A Yes, very much.

11 MR. FITZMAURICE: Nothing further. Thank you.

12 THE COURT: Mr. Burks?

13 RE-CROSS EXAMINATION OF CHRISTOPHER MURRAY BY  
14 BY MR. BURKS:

15 Q Just to be clear, the tax liens that he was talking  
16 about, the various liens he was talking about, if the  
17 property is sold, whether it's sold to a cash bidder or to a  
18 stalking horse, credit bearer, or another credit bearer,  
19 they still don't get paid, or do they?

20 MR. FITZMAURICE: Objection, Your Honor, calls for  
21 speculation as to the results of, for example, negotiation  
22 that the bidder might, a successful bidder might have with  
23 the taxing authority.

24 THE COURT: I'll overrule the objection.

25 BY MR. BURKS:

1 A Yeah, I think the tax liens have to get paid at a  
2 closing on the building regardless of whether it's sold a  
3 cash buyer or be accredited.

4 MR. BURKS: Nothing further, Your Honor.

5 THE COURT: Thank you. Mr. Baker?

6 MR. BAKER: No questions.

7 THE COURT: Mr. Shannon?

8 MR. SHANNON: No questions, Your Honor.

9 THE COURT: Mr. Fitzmaurice?

10 MR. FITZMAURICE: Nothing further, Your Honor.

11 Thank you.

12 THE COURT: Thank you, Mr. Murray. Thank you for  
13 your patience. You may step down.

14 MR. MURRAY: Thank you, sir.

15 THE COURT: Thank you. Mr. Fitzmaurice.

16 MR. FITZMAURICE: Thank you, you know, the bank  
17 rests.

18 THE COURT: All right, thank you. Mr. Baker, do  
19 you have witnesses?

20 MR. BAKER: I defer to Mr. Burks.

21 THE COURT: Mr. Burks, do you have a witness?

22 MR. BURKS: Your Honor, at this time ... Judge, at  
23 this time, 2425 WL calls Mr. Holliman.

24 THE COURT: Is he the gentleman that's in the  
25 waiting room?

1 MR. BURKS: Yes.

2 THE COURT: All right (indiscernible). He's a  
3 rebuttal witness, I assume?

4 MR. BURKS: Excuse me?

5 THE COURT: He's a rebuttal witness, I assume?

6 MR. BURKS: I'm putting on my case in chief.

7 THE COURT: How come I was told that I only had  
8 three witnesses and now I've got someone else?

9 MR. BURKS: He's a rebuttal witness for my case in  
10 chief. I'm sorry.

11 MR. FITZMAURICE: Your Honor, may we inquire,  
12 rebuttal as to what?

13 MR. BURKS: So, it's been represented that the  
14 plan was noticed out and this is a creditor who received no  
15 notice and no (indiscernible) to vote on.

16 THE COURT: Okay, fine. Sir, if you'll come to  
17 the podium. (indiscernible) I will swear you in. Please  
18 raise your right hand to be sworn. Do you swear or affirm  
19 to tell the truth, the whole truth and nothing but the  
20 truth, so help you God.

21 MR. HOLLIMAN 1: Yes.

22 THE COURT: All right. Please be seated sir,  
23 right here. Make sure you speak into the microphone. Mr.  
24 Baker you may proceed at your leisure.

25 MR. BURKS: Mr. Burks.

1 THE COURT: Mr. Burks, sorry.

2 DIRECT EXAMINATION OF ALLEN HOLLIMON

3 BY MR. BURKS:

4 Q Hi, thanks for waiting. I bet that was a lot of fun.

5 A Yes, sir.

6 Q What is your name, sir?

7 A My name is Allen Holliman.

8 Q And what do you do, sir?

9 A I am the owner of the(indiscernible) company that 2425  
10 (indiscernible).

11 THE COURT: I didn't catch it, sir, so please say  
12 that answer again. You are what?

13 THE WITNESS: I am the owner and CEO of Nationwide  
14 Security, which is (indiscernible) 2425 (indiscernible),  
15 suite 300.

16 THE COURT: Thank you.

17 BY MR. BURKS:

18 Q Do you have any knowledge of a company called Galleria  
19 2425 Owner?

20 A Yes, I do.

21 Q And what knowledge do you have? How do you know this  
22 company? How do you know the company Galleria 2425 Owner?

23 A I provide security services for the building.

24 Q And do you have a contract with someone to do that?

25 A Yes, we do.

1 Q With whom?

2 A With the Galleria 24.

3 Q With Galleria 2425 Owner?

4 A Correct.

5 Q Did you file a proof of claim in this case?

6 A We have not, as of yet.

7 Q All right. Are you owed, in your mind, are you owed  
8 money by the estate? By the creditor?

9 A Absolutely.

10 Q Did you receive a plan ballot voting ... let me look ...  
11 did you receive a notice regarding voting on the plan?

12 A Yes, from Galleria.

13 Q From Galleria. And did you receive notice from anybody  
14 else?

15 A I have not.

16 Q Did you submit a ballot?

17 A No, I have not.

18 Q When did you receive the ballot from Galleria?

19 A Early May.

20 Q Early May?

21 A Early May, if I recall correct.

22 Q Did you receive anything in the mail from MPK or the  
23 chapter 11 trustee regarding this plan?

24 A Not that I recall.

25 MR. BURKS: Pass the witness, Your Honor.

1 THE COURT: Bear with me for one second.

2 THE WITNESS: Yes, Your Honor.

3 THE COURT: Give me the full name of your company  
4 again, sir.

5 THE WITNESS: Nationwide Investigations and  
6 Security Inc.

7 THE COURT: So, Nationwide Security 2425 West Loop  
8 South 300, Houston, Texas 77027.

9 THE WITNESS: That's correct.

10 THE COURT: That's your mailing address.

11 THE WITNESS: Correct.

12 THE COURT: Go ahead.

13 MR. TROOP: Thank you, Your Honor.

14 CROSS EXAMINATION OF ALLEN HOLLIMAN

15 BY MR. TROOP:

16 Q Mr. Holliman, good afternoon.

17 A Good afternoon.

18 Q Mr. Holliman, I'm not sure I understood what you said.  
19 You said you received a package in early May, with regard to  
20 (indiscernible). Correct?

21 A If I can recall, yes.

22 Q Early May. And you said that that package that you  
23 received was from the Debtor, Galleria Owner 2425, not from  
24 National Bank of Kuwait?

25 A Yeah, I haven't heard from the Bank of Kuwait.

1 MR. TROOP: Your Honor, I'm going to bring up on  
2 the screen, through Mr. (indiscernible).

3 THE COURT: Thank you (indiscernible).

4 MR. TROOP: Your Honor, this is the -- go to the  
5 top, please, of the document ...

6 MAN 1: Sir, this is ECF 501 (indiscernible).

7 MR. TROOP: ECF 501-15, Your Honor.

8 THE COURT: All right.

9 BY MR. TROOP:

10 Q Mr. Holliman, you said the name of your company is  
11 National Security?

12 A No, Nationwide.

13 Q Nationwide Security.

14 A Investigation.

15 Q Thank you.

16 MR. TROOP: Could you scroll down to the attachment  
17 with the addresses?

18 BY MR. TROOP:

19 Q Do you see this highlighted in blue, sir?

20 A Yes, I do.

21 Q Is that your address, 2425 West Loop, Suite 300?

22 A That's my address.

23 Q Houston, Texas 77007.

24 A Correct.

25 Q And you said you received a package at the beginning of



1 May. Correct?

2 A From my recollection.

3 MR. TROOP: Can you go to the top of the document,  
4 please? Could you scroll down just a little bit.

5 BY MR. TROOP:

6 Q Do you see that it was National Bank of Kuwait,  
7 paragraph three, that mailed the solicitation package in  
8 early May? There, right there, number three?

9 A Three ...

10 Q On May 6th.

11 A On May 6th, (indiscernible) National Bank, okay, yes, I  
12 see that.

13 THE COURT: (indiscernible) down a little bit.

14 MR. TROOP: I'm sorry. Could you please bring up  
15 the plan, 2425 in the Debtor's certificate of services  
16 (indiscernible)?

17 THE COURT: Who's doing it?

18 BY MR. TROOP:

19 Q You said you received it in early June, right? That's  
20 what you said?

21 A I said early May, from my recollection.

22 Q Actually, that's not what you said, sir. Early May,  
23 that's right, that's correct, that was our plan. I  
24 apologize. Did you receive a second package in early June?

25 A I don't recall.

1 Q You don't recall. Do you see that this would have been  
2 service made by the Debtor, Galleria 2425 Owner LLC, and the  
3 other plan proponent, 2425 WL LLC? The plan you said you  
4 got. You said you go the Debtor's plan, right?

5 A I got the Debtor's plan. Okay.

6 Q You see, this was mailed on May 30th, correct.

7 A Correct.

8 Q Like a month after you said you got the package, which  
9 would have been consistent with when MPK sent you a package.  
10 Correct?

11 A (indiscernible) MPK, I recall the Debtor's package but  
12 I don't recall (indiscernible).

13 Q And can that be because you looked at the name of the  
14 case and it said Galleria 2425 Owner at the top?

15 A That's what it says.

16 Q Do you have the package that you received with you?

17 A I don't have it with me, no.

18 Q But if you received a package in early May, did it have  
19 a ballot in it?

20 A I don't recall.

21 Q Could you tell me who asked you to come here to be a  
22 witness today?

23 A The attorneys from Choudhri (indiscernible).

24 Q And they asked you. Did Mr. Choudhri talk to you about  
25 whether you received a package before you talked to the

1 attorneys?

2 A No.

3 Q No. How did they get your name?

4 A They should have a name. I operate the security in  
5 that building.

6 Q But how did they think to call you about whether you  
7 got this or not?

8 A I couldn't answer that question.

9 MR. TROOP: Okay. What else? I don't think  
10 anything else, Your Honor. No further questions for this  
11 witness.

12 THE COURT: All right, (indiscernible). Sir, when  
13 did you become aware of this bankruptcy filing the first  
14 time?

15 THE WITNESS: I can't recall that. It's been  
16 going on for a while, so probably, I think maybe a year ago  
17 (indiscernible) paperwork had come through. But that's all  
18 that my office (indiscernible), from my attorney.

19 THE COURT: Thank you. Mr. Burks?

20 MR. BURKS: Nothing further, Judge.

21 THE COURT: All right, thank you, sir. You may  
22 step down. Mr. Burks, next witness.

23 MR. BURKS: He's not here yet. Let me see, my  
24 witness list because I'm constantly losing the damn thing.  
25 Put this up on the screen, please, 12.

1           Your Honor, rather than call Mr. Choudhri at this  
2     time, what I think I would like to do, is put some  
3     documents, court filed documents, that have been admitted  
4     into evidence.

5           THE COURT: I can let you do that in argument if  
6     it's already in the record. But what I'd like to do is I'd  
7     like to conclude testimony. So, if you want to rest that's  
8     fine. But this is the time to call witnesses, live  
9     testimony. That's what I would like for you to do. I'm  
10    surprised we're not hearing from Mr. Choudhri. I really  
11    wanted to hear from him. But if you don't want to call him,  
12    that's fine.

13          MR. BURKS: Well, I want to call him, but he's  
14    ill. I don't know where he is. He's on the screen, he's ...  
15    I know that he is ill. Excuse me. I know that he has told  
16    me he is very ill.

17          THE COURT: He is on the phone.

18          MR. BURKS: All right.

19          THE COURT: And if he'll show up on video, I'm  
20    happy to have you examine him. If he doesn't want to show  
21    up or doesn't want to testify, that's fine too. You can  
22    rest. And I'm happy to give you a few minutes, if you would  
23    like, to try and contact him to get him by video.

24          MR. BURKS: You've read my mind. May I do so?

25          THE COURT: Yes. So, let's do this: It is 2:42.

1 I'll come back at 2:50. That gives you eight minutes to try  
2 and get (indiscernible).

3 MR. BURKS: Thank you.

4 THE COURT: All right, thank you.

5 CLERK: All rise.

6 (Recess)

7 THE COURT: All right, Mr. Burks, what's the  
8 status?

9 MR. BURKS: Your Honor, 2425 WL calls Mr. Ali  
10 Choudhri.

11 THE COURT: He is not online or on the phone. He  
12 was when I left the bench. He's left. You should hear a  
13 ding if he calls in.

14 MR. BURKS: Is he on the headphones?

15 THE COURT: No.

16 MR. BURKS: I will wait for him to come on for as  
17 long as --

18 THE COURT: No, I'll wait a few more minutes, and  
19 then he's not going to testify.

20 MR. BURKS: Yes, Your Honor. Was that something  
21 (indiscernible), Judge?

22 THE COURT: Excuse me?

23 MR. BURKS: Was there --

24 THE COURT: Oh, there's a phone call. There he  
25 is. He's been unmuted. He needs to show up now by video.

1 MR. CHOUDHRI: Hello?

2 THE COURT: Mr. Choudhri, I can hear you. Can you  
3 hear me?

4 MR. CHOUDHRI: Judge Norman?

5 THE COURT: Yes.

6 MR. CHOUDHRI: Yes, I can hear you.

7 THE COURT: Okay, I need you to appear by video,  
8 and I'll swear you in, sir, and you can testify.

9 MR. CHOUDHRI: Okay, I'm having a problem with my  
10 video. Can you give me just a minute?

11 THE COURT: I'll give you a few more minutes.  
12 I've already given you a few minutes, but I'll give you a  
13 few more.

14 MR. BURKS: Let me see. Do we have  
15 (indiscernible) deposition?

16 MR. BAKER: Yeah.

17 MR. BURKS: Which one is it?

18 MR. BAKER: It's 49922 or 23.

19 MR. BURKS: Yeah, all right, okay.

20 MR. CHOUDHRI: Thanks for your patience.

21 THE COURT: Just so the parties are aware, if you  
22 want to share documents with Mr. Choudhri, which I'm  
23 assuming that you are going to do, that will have to occur  
24 through GoTo Meeting. So just be aware of that fact.

25 MR. BURKS: Where's our exhibit list?

1 MR. BAKER: (indiscernible).

2 MR. BURKS: Yeah, it's all the same.

3 THE COURT: All right, Mr. Choudhri, can you hear  
4 me? Mr. Choudhri, can you hear me?

5 MR. CHOUDHRI: Yes.

6 THE COURT: All right, I'm going to ask you to  
7 raise your right hand, sir, and be sworn. Do you swear or  
8 affirm to tell the truth, the whole truth, and nothing but  
9 the truth, so help you God?

10 MR. CHOUDHRI: Yes.

11 THE COURT: All right, go ahead, Mr. Burks.

12 DIRECT EXAMINATION OF ALI CHOUDHRI

13 BY MR. BURKS:

14 Q Sir, will you please state your -- state and spell your  
15 name for the record?

16 A Ali Choudhri.

17 Q And how do you spell your last name, sir?

18 A C-H-O-U-D-H-R-I.

19 Q Are you the -- what is your position in 2425 WL?

20 A Equity.

21 Q What is your position in Galleria 2425 Owner?

22 A Equity.

23 Q All right, I'm going to start with some housekeeping

24 matters, Mr. Choudhri. I'm going to put up ECF Docket

25 Number 502-34. And I'd like you to tell me when you can see

1 it, because I'm not sure what technological (indiscernible).

2 There's no 502-34, Hilco sale brochure.

3 A I'm sorry?

4 MR. FITZMAURICE: One moment, sir.

5 MR. BURKS: One moment, sir. We're putting up an  
6 exhibit for you to look at. So the Exhibit 30 -- 499-34 is  
7 somewhere.

8 MR. FITZMAURICE: Your Honor, I apologize. Before  
9 we begin the questioning of Mr. Choudhri, looking at it on  
10 the screen, it's not clear to me that that's a real  
11 background or --

12 THE COURT: It's a virtual background. Mr.  
13 Choudhri, will you turn off your virtual background? You  
14 have to project your GoTo Meeting, Mr. Choudhri. Anything  
15 you do internally, we can see in the courtroom, he can't  
16 see. You've got to be connected to GoTo meeting. You've  
17 got to share through GoTo Meeting. Because you can project  
18 it all over the courtroom, but he's not going to see it. So  
19 Mr. Choudhri, in case you didn't understand my instructions,  
20 any sort of virtual background blurring needs to be turned  
21 off. Thank you.

22 THE WITNESS: Can you see this?

23 THE COURT: I can see you, yeah. That's fine, but  
24 you can't --

25 THE WITNESS: Okay, (indiscernible).



1 THE COURT: -- no virtual backgrounds.

2 THE WITNESS: Yes, sir.

3 MR. BURKS: And Mr. Choudhri, we're waiting for  
4 ECF 499-34, the Hilco sale brochure, to come up, and then  
5 we're going to go to 499-12 in one moment, sir.

6 MR. BAKER: Your Honor, I apologize. I'm  
7 connected and I'm clicking on it. It says "Can't share your  
8 screen. We apologize, but we're experiencing difficulties  
9 with the video contents and are unable to share your  
10 screen." I've never had that happen before.

11 THE COURT: Yeah, it sometimes -- and that's the  
12 reason why we -- okay, let's see if I could make it work.

13 MR. BAKER: You want me to try --

14 THE WITNESS: I can't see with these.

15 THE COURT: Mr. Choudhri, we'll be with you in a  
16 second.

17 THE WITNESS: Okay, sorry.

18 THE COURT: I get the same error message, Mr.  
19 Burks. We can't share documents.

20 MR. BURKS: So we can see it, but he won't. Is  
21 that correct?

22 THE COURT: That's correct.

23 MR. BURKS: Oh.

24 THE COURT: Yeah, there we go. All right, so I'll  
25 try and pull up documents for you. What do you want to pull

1 up?

2 MR. BURKS: Thank you, Your Honor. I apologize.

3 I mean, I don't know what I can do about it, but I do  
4 apologize. Docket 499-34, Your Honor, ECF 499-34 and 36.

5 Mr. Choudhri, hang on there. We're about to,  
6 apparently, about to get this done.

7 Mr. Choudhri, the document, ECF 499-34, is on the  
8 screen. Is it big enough for you to see it?

9 And Judge, I don't know if you can click and open  
10 it bigger. I just don't know how it works.

11 THE COURT: All I can do is this.

12 THE WITNESS: Yeah, yeah, I see it.

13 THE COURT: Mr. Choudhri, you can drag on your  
14 screen and basically make us very small and your exhibits  
15 very, very large.

16 THE WITNESS: Okay, yes, sir. I can. Thank you,  
17 Your Honor.

18 MR. BURKS: Let me know when you've got it to  
19 where you can read the document, Mr. Choudhri.

20 THE WITNESS: I can't scroll down, but I can zoom  
21 in and out. I'm not able to scroll down.

22 THE COURT: You can't scroll? All you can do is  
23 make it bigger or smaller?

24 THE WITNESS: Yes, I see it.

25 BY MR. BURKS:

1 Q Mr. Choudhri, obviously, you're aware --

2 A (indiscernible).

3 Q -- of the proceedings going on in the bankruptcy case  
4 of Galleria 2425 Owner. Is that correct?

5 A Huh? Say that again.

6 Q Are you aware that there's an auction taking place this  
7 Friday regarding the --

8 A Yeah. (indiscernible).

9 Q -- building in this bankruptcy case? And do you know  
10 who marketed the property for auction?

11 A Yes.

12 Q Who?

13 A Hilco.

14 Q Look at what has been put on the screen as Docket  
15 Number 499-34. It purports to be the Hilco Real Estate  
16 sales document.

17 A Yes, I see this.

18 Q All right, do you know whether or not Hilco is  
19 marketing the building or the building with all the --

20 A Can you speak up?

21 Q Sure, can you hear me now?

22 A Just if you can speak up a little, please.

23 THE COURT: I don't think he can get any louder,  
24 Mr. Choudhri. You need to get off your speaker phone. Hold  
25 your phone up to your ear. Go.

1 THE WITNESS: Hello?

2 MR. BURKS: Can you hear me now?

3 THE WITNESS: Better. Yeah, much better.

4 MR. BURKS: All right, thank you. And the judge  
5 has let you put the phone up to your face, so you're in good  
6 shape, sir.

7 THE WITNESS: Thank you, Your Honor. Thank you,  
8 Judge.

9 BY MR. BURKS:

10 Q Looking at the exhibit up on the screen, have you seen  
11 that whole document before?

12 THE COURT: Do you want me to scroll through it?

13 MR. BURKS: Please, so we can see.

14 THE WITNESS: Yep, please. I have -- that's the  
15 one with an extra zero. I think it's got an extra zero on  
16 the 18.6 million. That's the one. I've seen it. Yeah,  
17 I've seen this.

18 BY MR. BURKS:

19 Q Do you know whether this brochure is auctioning or  
20 offering for auction the building or the building and the  
21 furniture?

22 MR. FITZMAURICE: Your Honor, objection. The  
23 Trustee can only sell the things the estate owns. That's  
24 what's going to be sold pursuant to the auction and approved  
25 or not by Your Honor at the sale hearing.

1 MR. BURKS: That's not what I asked.

2 THE COURT: Well, I'll let you respond to the  
3 objection. The objection basically is the Trustee can only  
4 sell, and you and I know that he can only sell whatever  
5 ownership interest he has.

6 MR. BURKS: Right.

7 THE COURT: So what's --

8 MR. BURKS: Well, what I want to make sure is, I'm  
9 going to establish what he has an ownership interest in or  
10 not, through Mr. Choudhri.

11 THE COURT: Well, I -- why is that important to  
12 plan confirmation?

13 MR. BURKS: Because the plan is offering the --  
14 whatever Hilco is advertising, and Hilco is advertising the  
15 building and the furniture. I want to put on testimony that  
16 the furniture is not the estate. It's just Mr. Choudhri's  
17 or one of his enemy's.

18 THE COURT: I'll sustain the objection. Thank  
19 you.

20 THE WITNESS: I (indiscernible) --

21 THE COURT: Mr. Choudhri, there's no question for  
22 you, so you don't get to talk. Thank you.

23 MR. BURKS: There's no question. There's no  
24 question.

25 Put on 499 as well.

1 THE COURT: Are you asking me? Because he can't  
2 do it.

3 MR. BURKS: I am asking you. I apologize. And he  
4 just gave me that look like "Don't ask me. Ask him."

5 THE COURT: We're going to do it a different way.  
6 It'll make things a little quicker.

7 MR. BURKS: I'm used to the tap screen, so I'm not  
8 going to embarrass myself like I did the other day. Judge  
9 said "Mr. Burks, you just tap that screen and expect a  
10 result?"

11 THE WITNESS: I see the thing about  
12 (indiscernible).

13 THE COURT: Hold on, Mr. Choudhri. We'll be with  
14 you in just a second.

15 THE WITNESS: Sorry.

16 MR. BAKER: Back, 2425. Yes, 2425.

17 MR. BURKS: Is that what we want?

18 MR. BAKER: Yeah.

19 THE COURT: All right, this should be easier.  
20 What is it that you want to look up, pick up, Mr. Burks?

21 MR. BURKS: I appreciate what you're doing. 499 -  
22 - well, Your Honor...

23 MR. FITZMAURICE: So Your Honor, it appears that  
24 the witness has materials in front of him that he's flipping  
25 through or otherwise looking at, so we would object to that.

1 THE COURT: All right, Mr. Choudhri, you may not  
2 look at anything other than what's presented on the screen.  
3 Let me ask you two questions. Do you have any paperwork in  
4 front of you?

5 You're muted, Mr. Choudhri.

6 THE WITNESS: Your Honor, I have a 499 --

7 THE COURT: I need you to set that all aside,  
8 please.

9 THE WITNESS: Okay.

10 THE COURT: Okay? Is there anyone else in the  
11 room with you?

12 THE WITNESS: No, Your Honor.

13 THE COURT: Okay, so I don't want to see any  
14 paperwork in front of you, besides you. Move it all away  
15 from you. Thank you.

16 I apologize. When all my bandwidth is taken with  
17 GoTo Meeting, everything else becomes super slow for me,  
18 which is a reason we don't typically present exhibits for  
19 parties.

20 MR. BURKS: Makes sense.

21 THE COURT: All right, 499-12, is that correct?

22 MR. BURKS: Yes, Your Honor.

23 THE COURT: That's 499-12. I'm not sure that's  
24 what you want.

25 MR. BURKS: Let me see.

1 THE COURT: Is it two pages?

2 MR. BURKS: I think it is.

3 THE COURT: Okay.

4 MR. BURKS: I can't read it, though.

5 MR. FITZMAURICE: No, second page.

6 MR. BURKS: Second page?

7 MR. FITZMAURICE: On the second page.

8 MR. BURKS: Mr. Choudhri, move onto the second  
9 page, please, on Page 2.

10 THE COURT: What number do you want to go to that  
11 I can make it bigger for him?

12 MR. BAKER: Very top.

13 MR. BURKS: It's very top --

14 THE WITNESS: Yeah, I don't see this.

15 MR. BURKS: Very top of the second page.  
16 (indiscernible).

17 THE WITNESS: Is this document (indiscernible)?  
18 Yeah.

19 BY MR. BURKS:

20 Q Does the Debtor own any office equipment or  
21 furnishings?

22 A No.

23 MR. BURKS: All right, Your Honor, you can take  
24 all these ones off, please.

25 BY MR. BURKS:



1 Q Mr. Choudhri, did you make an offer to buy the claims  
2 of the Chapter 11 Trustee against NBK?

3 A No. Yes, on behalf of 2425 WL, LLC.

4 Q And what was the last amount of the offer you made to  
5 the Trustee?

6 MR. FITZMAURICE: Objection, Your Honor.

7 THE WITNESS: \$700,000.

8 THE COURT: Hold on, one second. What's the  
9 objection?

10 MR. FITZMAURICE: There's lack of predicate, lack  
11 of foundation as to the response of the -- of who the offer  
12 was on behalf of. We've seen an offer of fifty. The first  
13 offer on behalf of some other entity, not on -- nothing  
14 related to any of the -- like Mr. Choudhri has testified to.

15 THE COURT: I'll overrule the objection. Go  
16 ahead. I mean, I've seen the check. Everyone's seen the  
17 check. Go ahead.

18 THE WITNESS: I'm (indiscernible) it was on behalf  
19 of -- I made it on behalf of 2425 WL, LLC, Barron  
20 Newburger's the law firm that Steve Sather's with. And Mr.  
21 Sather (indiscernible) while Mr. Sather (indiscernible) made  
22 the last offer for \$700,000.

23 MR. BURKS: Thank you.

24 THE COURT: Mr. Choudhri, I'm going to ask you to  
25 do a couple of things. I need to see your face when you're

1     testifying. I don't have a problem with you doing it  
2     remotely, but you need to be looking at the camera. Get  
3     your hand off your face. Thank you so much. Go ahead.

4     BY MR. BURKS:

5     Q     Have you received -- and is the phone -- have you  
6     received a rejection or an acceptance in that offer?

7     A     Yes.

8     Q     And what was it?

9     A     Rejection.

10    Q     I have in my pocket a check. It's a cashier's check, a  
11    bank check. It's called a bank check. Those are good  
12    funds. Do you want me to return those to you now that  
13    you've received the rejection?

14           MR. FITZMAURICE: Objection, Your Honor. Lacks  
15    foundation. Mischaracterizes the nature of the document we  
16    looked at earlier. There's no evidence as to whether the  
17    purported check represents "good funds."

18           THE COURT: I'll sustain the objection.

19           THE WITNESS: So --

20           THE COURT: You don't get to answer the question.  
21    There's no question before you, Mr. Choudhri. Thank you.

22           THE WITNESS: All right.

23           MR. BURKS: Is there a way for him to see...

24    BY MR. BURKS:

25    Q     So I'm holding what purports to be an original,

1 official check, written on the bank of Metro City Bank.

2 What can you tell me about that check?

3 MR. BURKS: And is there a way that he can...

4 THE COURT: No, unfortunately not.

5 THE WITNESS: I'm familiar with this check.

6 BY MR. BURKS:

7 Q Can you see it?

8 A Yes, I'm familiar with this check.

9 Q All right, what is it?

10 A It's a cashier's check payable to Christopher Murray, a  
11 trustee. And in the memo, it's "purchase of claims  
12 (indiscernible) against NBK," which is the latest -- or  
13 offers made with proof of funds. And then, Mr. Shannon  
14 asked for proof of funds and provided them earlier, and then  
15 he -- and then to eliminate any further issues to the bank  
16 statement as holder that he had, which had \$7 million in it.  
17 And then he got a cashier's check payable to the trustee for  
18 \$700,000. And Mr. Shannon said Mr. Murray rejects this  
19 offer and he's going to (indiscernible) Chapter 7 trustee as  
20 the Chapter 7 Trustee. And the same reason that Mr. Shannon  
21 said that Mr. Murray rejects this offer, we asked why. He  
22 said it was attorney/client privilege.

23 MR. FITZMAURICE: Objection, Your Honor. He went  
24 very, very far beyond the question. It also appears that  
25 Mr. Choudhri's looking off camera and perhaps reading

1 something. (indiscernible) --

2 THE COURT: I don't think so, but I'm going to --  
3 first of all, bear with me --

4 THE WITNESS: I'm not reading anything, Your  
5 Honor.

6 THE COURT: -- Mr. Choudhri, bear with me.  
7 There's a -- well, there's a question in front you. You can  
8 answer it.

9 So Mr. Burks, I want to make sure that I recall  
10 that that check is dated June 14th, 2024. Is that correct?

11 MR. BURKS: June 14, 2024, written on Metro City  
12 Bank.

13 THE COURT: Okay, that's fine. I'll strike the  
14 part of his testimony that basically asked whatever you  
15 asked him, because he went on for quite a while.

16 MR. BURKS: Yes, Your Honor.

17 THE COURT: Mr. Choudhri, I'm going to ask you to  
18 listen to the question and answer it succinctly. You don't  
19 get to give narratives. Thank you.

20 THE WITNESS: Yes, Your Honor.

21 BY MR. BURKS:

22 Q Mr. Choudhri, who is QB Loop?

23 A QB Loop Property, LLC is a limited liability company  
24 that a number of investors and its general partners  
25 (indiscernible).

1 Q Do you have any interest, ownership interest, in that  
2 entity?

3 A No.

4 Q Do you have anything invested in the funds personally,  
5 in that entity?

6 A No, other than verify the (indiscernible) who used the  
7 funds when I made the offer on behalf of myself to purchase  
8 the note and lien, and they're the financier to advance the  
9 funds to acquire the note and lien. And (indiscernible) had  
10 made offers to buy 2425. They made offers (indiscernible) -  
11 -

12 THE COURT: Mr. Choudhri, let me cut you off. I'm  
13 going to strike anything after "no." Okay?

14 Go ahead. Ask the next question.

15 MR. BURKS: Am I the only one who's having trouble  
16 understanding enough?

17 THE COURT: I don't think so. Do want earphones?

18 MR. BURKS: Do you understand him?

19 WOMAN 1: He's muffled.

20 THE COURT: He's muffled, but that's because he's  
21 on a speaker phone.

22 MR. BURKS: Mr. Choudhri, will you please get off  
23 the speaker phone and hold the phone up?

24 THE WITNESS: I'm sorry, I'm having a problem with  
25 my phone. I'm having a problem with my -- I'm having a

1 problem with my phone. I could come back to court if that's  
2 easier.

3 MR. BURKS: No, sir. Were you here on the phone -  
4 - no.

5 BY MR. BURKS:

6 Q Do you have an opinion as to whether -- are you aware  
7 that the cash -- final cash collateral order entered by this  
8 court is up on appeal? Are you aware of that?

9 MR. FITZMAURICE: Objection, Your Honor. Calls  
10 for speculation.

11 THE WITNESS: Can you repeat your question?

12 MR. BURKS: I'm sorry, Mr. Choudhri, why don't --

13 THE COURT: Foundation?

14 MR. BURKS: Foundation?

15 THE COURT: Yeah, is he aware --

16 MR. FITZMAURICE: And also relevance to  
17 confirmation, Your Honor.

18 MR. BURKS: Well, it's been (indiscernible).

19 THE COURT: Is the appeal part of the exhibits  
20 have been admitted?

21 MR. BURKS: Right, 546-98 and 99.

22 THE COURT: All right, so what's the relevance?

23 MR. BURKS: The relevance is, is that is he aware  
24 that the cash collateral order is not final with respect to  
25 anything that may have an impact on the plan?

1 MR. FITZMAURICE: So Your Honor --

2 THE COURT: I'll sustain the objection as to  
3 relevance. There's no said pending appeal, so at this point  
4 in time, I'm not bound by anything the appeals court does.

5 MR. BURKS: Right, that's not why it was being  
6 offered. I'm going to move along.

7 THE COURT: Okay.

8 BY MR. BURKS:

9 Q Mr. Choudhri, you've been here on the phone most of the  
10 day today, correct?

11 A Yes, I've been listening in.

12 Q All right, are there any concerns that you have right  
13 now about the confirmation process?

14 MR. FITZMAURICE: Objection, Your Honor.  
15 Relevance to any concerns that Mr. Choudhri has. What  
16 relevance do they have to confirmation?

17 THE COURT: I'm more than happy to hear from Mr.  
18 Choudhri about his concerns. Okay? But to allow him to  
19 give a narrative about what his concerns are, Mr. Burks,  
20 doesn't work for me.

21 MR. BURKS: All right.

22 THE COURT: Okay. If you want to address specific  
23 concerns, I told Mr. Choudhri that I would listen to  
24 whatever sort of complaints he might have about the plan,  
25 about the plan proponents, about fairness, and I'm more than

1 happy to hear that. I don't want to hear him give a  
2 narrative. Okay? And part of it is what happened on  
3 Monday. Okay?

4 MR. BURKS: That's what I'm balancing.

5 THE COURT: So ask your questions. Be specific.  
6 Get an answer to the questions, and I'm happy to hear it,  
7 and I'm happy to give you as much time as that takes.

8 MR. BURKS: Thank you. Subject to Your Honor  
9 cutting off any non-responsive answers.

10 THE COURT: Well, we'll get to a point where I'll  
11 ask you to sit down, so just be warned.

12 MR. BURKS: All right.

13 THE COURT: Okay?

14 BY MR. BURKS:

15 Q Mr. Choudhri, do you believe that \$3.7 million for the  
16 causes of action that you believe the Debtor or 2425 WL or  
17 you -- do you believe that that is a fair purchase price for  
18 those three causes of action?

19 MR. FITZMAURICE: So Your Honor, I think that  
20 mischaracterizes -- objection, I think that mischaracterizes  
21 the plan of what it does in its provisions. I also think  
22 that Mr. Choudhri's view is that issue is not relevant to  
23 whether or not the plan is confirmed --

24 THE COURT: I'm going to give, in fairness to Mr.  
25 Choudhri, because I know that he already believes it, I



1 don't like him, and then I'm prejudiced against him. I'm  
2 going to give him a little bit of leeway.

3 So go ahead, answer the question, Mr. Choudhri.

4 THE WITNESS: I believe it's absolutely unfair.  
5 There's no -- it's -- I'll stop. I'm going to keep going,  
6 Your Honor. I don't want to upset you any more than I have  
7 already.

8 THE COURT: No, Mr. Choudhri. I want to know why  
9 you think it's unfair.

10 THE WITNESS: I'm telling you, Your Honor. It's  
11 unfair, because everything has been (indiscernible) in the  
12 whole process. There's been no transparency. Mr. Murray  
13 has ignored me, not responded. I've made multiple offers to  
14 buy the claims. I've even drawn the litigation finance  
15 funds for \$2 million. (indiscernible) or there's more than  
16 the debt, and you take claims.

17 NBK wants desperately out of -- they want to buy a  
18 (indiscernible), but they don't want to market test it. It  
19 should -- just like the property should be market tested,  
20 the claims should be market tested. I know people that are  
21 willing to buy the claims. I know -- I have investors. The  
22 claims are very, very valuable. There's a lot the bank has  
23 done, and what the bank has done is they they've given the  
24 Trustee an unlimited admin amount, unlimited.

25 (indiscernible) admin claims, so I could take hold

1 of the offer then, but the response in writing from Mr.  
2 Murray -- Mr. RJ was, "It's irrelevant. We're not going to  
3 tell you that it's unlimited." The -- these plans are  
4 originally, defenseless, completely defenseless, and you're  
5 trading the biggest asset of the estate for one creditor,  
6 which is not appropriate. It's not fair.

7 The reason we're in bankruptcy is because of NBK.  
8 NBK (indiscernible). They didn't approve offers. They  
9 didn't respond to it. The loan agreement says you're  
10 supposed to provide SNDA. The settlement agreement says  
11 you're supposed to provide SNDA. I worked hard day and  
12 night. It is completely unfair.

13 Mr. Murray got on the stand today and told Your  
14 Honor that he so considered the offer (indiscernible)  
15 rejected. (indiscernible) rejected it. I have emails of  
16 them responding. I have emails from Kyung Lee, who is Mr.  
17 Murray's lawyer, saying "I don't care if Mr. Choudhri lives  
18 or dies." I had a stroke because of the stress because of  
19 the stress here, Your Honor. And it's so unreal that the  
20 Bank of Kuwait, that the Trustee --

21 THE COURT: Okay, I'm going to -- Mr. Choudhri,  
22 I'm going to cut you off now and go back to Mr. Burks --

23 THE WITNESS: I'm sorry, I'm sorry, I'm --

24 THE COURT: No, that's fine. I'm going to go back  
25 to Mr. Burks.

1 THE WITNESS: -- really sorry, Your Honor.

2 THE COURT: No, I need you to stop. Okay? Just  
3 listen and stop.

4 THE WITNESS: I'm sorry.

5 THE COURT: I'm going to go back to Mr. Burks and  
6 let Mr. Burks ask you a follow-up question or questions  
7 about what you just said.

8 Mr. Burks?

9 MR. BURKS: Thank you, Your Honor, very much. Mr.  
10 Choudhri, please take a deep breath, sir. Please, just take  
11 a deep breath. Sit up --

12 THE WITNESS: I'm really sorry. (indiscernible) -  
13 -

14 MR. BURKS: -- straight so we can see your face.  
15 You don't have anything to apologize for. You don't. Now,  
16 I'm going to ask the next question, all right? All right.

17 BY MR. BURKS:

18 Q Why do you think the causes of action should be market  
19 tested instead of simply sold for the amount that the  
20 Trustee thinks is a good price, whatever that price is?

21 A Because --

22 Q And limit your answer to why. Why do you think that?

23 A -- because it maximizes the value to everybody, not  
24 just one Creditor, to all the Creditors, everybody. Instead  
25 of discriminating and just not a lot of due process to me or

1 my claim, if people got (indiscernible) not giving them due  
2 process and discriminating against them in the plan,  
3 allowing -- if a recovery can be made, let's say  
4 (indiscernible) --

5 Q Wait a minute, if a recovery can be made, if a recovery  
6 can be made?

7 A I'm sorry, my blood pressure is my low -- my systolic  
8 is over 110. And I'm sorry I'm not 100-percent myself. So  
9 please forgive me. If a recovery can be made against the  
10 Bank of Kuwait, whether it's a contingency (indiscernible)  
11 like wasn't -- just like with Baker Botts and just like with  
12 Jerry Alexander, the contingency was not a million at first,  
13 and the cash could be used for the estate to stabilize or  
14 maximize it. In essence, sell the assets (indiscernible)  
15 for more, but the biggest asset of the estate is the lawsuit  
16 against the Bank of Kuwait. It is the biggest asset.

17 I had many conversations with large law firms that had  
18 evaluated these claims, and I believe the claims are very,  
19 very valuable, not just for me, but they have -- they're an  
20 asset of the estate, and they should be market tested and  
21 auctioned, just like anything else. It should be fair and  
22 open, and people should be able to bid on those things and  
23 value them.

24 Q All right, I'm going to ask you the next question.

25 Thank you, sir. That's very lucid. I'm going to give you

1 about 30 seconds just to -- please, breathe. I've seen what  
2 happens when you get this excited right now. Please, one  
3 moment, 15 seconds. All right? Just relax, please.

4 A Okay.

5 Q All right. Did you hear the testimony of Mr. Carter  
6 this morning?

7 A Yes.

8 Q All right, when you -- did you sit in a deposition with  
9 Mr. Carter?

10 A Yes.

11 MR. BURKS: All right, Mr. Baker, what is the ECF  
12 of that deposition, please? Do we have it?

13 THE WITNESS: I believe it is on 499-22 if I'm --  
14 if memory serves me correctly.

15 MR. BURKS: Maybe it's 499-22.

16 THE WITNESS: I think so. (indiscernible) a lot  
17 of these memorized. I know Mr. Fitzmaurice may think I'm  
18 looking at something, but I actually know it by heart.

19 MR. FITZMAURICE: And we're going to have this  
20 (indiscernible).

21 MR. BURKS: I don't know why (indiscernible) so  
22 Mr. (indiscernible) and Mr. Choudhri can --

23 THE COURT: The only way is for me to try and pull  
24 it up for you.

25 MR. BURKS: Okay. One moment, Mr. Choudhri.

1 THE WITNESS: Yeah.

2 THE COURT: Mr. Burks, it's --

3 MR. BURKS: Mr. Choudhri, you just stated a moment  
4 ago that you listened to the --

5 THE WITNESS: (indiscernible).

6 MR. BURKS: -- testimony of the gentleman this  
7 morning. You've also sat through the deposition. I think  
8 it was one document.

9 BY MR. BURKS:

10 Q Did you ask a lot of questions at that deposition?

11 A I did.

12 Q All right. Subject to, and let the other side object  
13 before you start talking, do you believe that the testimony  
14 today was inconsistent with what you heard? And this is a  
15 yes or no answer, inconsistent with what you heard at the  
16 deposition about ten days ago?

17 A Absolutely. Absolutely.

18 MR. FITZMAURICE: Your Honor, objection.

19 MR. BURKS: All right, (indiscernible) objection.

20 THE COURT: I think that's so general, I can't let  
21 that in.

22 MR. BURKS: Yes or no?

23 THE COURT: He can't testify to that, no.

24 MR. BURKS: All right.

25 THE COURT: I'm giving -- willing to give him some

1 leeway. I'm not willing to give him that much leeway.

2 MR. BURKS: Yes, Your Honor.

3 BY MR. BURKS:

4 Q So in the deposition, did, in your opinion, did Mr.

5 Carter seem to know anything about the Chapter 11 plan?

6 MR. FITZMAURICE: Objection, Your Honor.

7 Relevance? Mr. Carter?

8 THE COURT: I'll sustain the objection as to  
9 relevance. I don't want to hear that. I want to hear what  
10 Mr. Choudhri thinks about the plan. And I'll give you some  
11 leeway for that to happen. He's expressed that it's unfair,  
12 that it doesn't evaluate claims properly, that it hasn't  
13 been fair and open. That's what I want to hear, Mr. Burks,  
14 over their objections. Okay?

15 MR. BURKS: Understood.

16 THE COURT: All right, now, if you have other  
17 evidence that will survive their objections, I want to hear  
18 that, too.

19 MR. BURKS: Yes, Your Honor.

20 THE COURT: Okay.

21 BY MR. BURKS:

22 Q Mr. Choudhri, I want to turn to Exhibit 499-98.

23 A Eight, it's very small.

24 THE COURT: We're not there yet, Mr. Choudhry.

25 Bear with me.

1 THE WITNESS: (indiscernible). Okay.

2 THE COURT: You said 499-88?

3 MR. BURKS: No, I did, but I meant 546-98, one of  
4 the exhibits amended this morning, Judge, 546.

5 THE COURT: It doesn't go to 98. It's got 1  
6 through 6.

7 MR. BURKS: One, two, three, four, five, six,  
8 okay.

9 MR. FITZMAURICE: Is that an order?

10 THE COURT: That is the order granted, Trustee's  
11 motions for an order.

12 MR. BURKS: Okay, just so -- all right, Mr.  
13 Choudhri, when you have a -- when you can view that, if you  
14 wouldn't tell me what it is, please.

15 THE WITNESS: Right, this is the (indiscernible)'s  
16 order.

17 BY MR. BURKS:

18 Q And is that the order we're authorizing you to buy the  
19 claims against Sonder?

20 A Yeah, an entity, yes. Not me personally.

21 Q All right.

22 A I know there's confusion about it, so I just want to be  
23 clear when we say that. That's correct. I think this is --  
24 yes, short answer, yes. All right.

25 Q All right, and is it your understanding that the plan



1 was proposed and filed before you bought those claims or  
2 your entity bought those claims?

3 A Correct.

4 Q And is it your understanding that the plan currently  
5 provides that only the Trustee can pursue that claim, and  
6 that no other creditor or party in interest can pursue that  
7 claim? Is that your understanding?

8 MR. FITZMAURICE: Objection, Your Honor. Mr.  
9 Choudhri's understanding is not relevant to what --

10 THE WITNESS: (indiscernible).

11 MR. FITZMAURICE: -- the order actually provides.  
12 We dealt with this on Monday.

13 THE COURT: I'll sustain the objection. What he  
14 believes really doesn't make any difference to me as it  
15 relates to this order and the plan, Mr. Burks.

16 MR. BURKS: All right, I have to find it in the  
17 plan. One moment. I think we've -- we all know about it.  
18 Counsel and I discussed it. We need to exclude the Sonder  
19 claim from the plan, but one moment, and I'll find it,  
20 Judge.

21 BY MR. BURKS:

22 Q What is the entity that purchased the --

23 MR. TROOP: Yeah, Your Honor, we'll stipulate that  
24 the Sonder claim has been sold pursuant to a court order at  
25 this point. It is not property of the estate that's going

1 to be purchased by the APA or administered under the plan.

2 THE COURT: I'll take that stipulation, Mr. Burks.  
3 It's not really an issue for me, based on what I've read.

4 MR. BURKS: As long as we -- it's in the plan  
5 paragraph, on Page 16, Paragraph J, causes of action and  
6 avoidance actions. As long as any confirmation order, if  
7 you decide to confirm the plan, if the stipulation is that  
8 the confirmation will specifically exclude or reserve that  
9 Sonder claim pursuant to your order, then I can move on,  
10 Judge.

11 MR. FITZMAURICE: Okay, Your Honor, we understand  
12 that the draft confirmation order we've submitted transfers  
13 claims that are owned by the estate into the liquidation  
14 trust by definition.

15 THE COURT: It's not a state claim anymore.

16 MR. BURKS: Okay, I sure would like that to be as  
17 clear as possible, Judge.

18 THE COURT: All right, go ahead.

19 MR. TROOP: Okay, Your Honor. We'll stipulate to  
20 it for (indiscernible).

21 THE COURT: That's fine.

22 Go ahead.

23 BY MR. BURKS:

24 Q Mr. Choudhri, do you understand what the plan would do  
25 -- first of all, did 2425 WL file a proof of claim? Let's

1 focus in. This may be one of my last areas, sir. Let's  
2 focus in on the 2425 WL claim, okay?

3 A Yes.

4 MR. BURKS: All right, Mr. Baker, will you put the  
5 proof of claim up?

6 (indiscernible).

7 MR. BAKER: Claim 14. I actually think 13 and 14  
8 -- 13 is tax claims, 14 is the big claim.

9 MR. BURKS: 499-4, Your Honor, please. That's 3,  
10 499-3. Wait, these claims were not --

11 MR. BAKER: That's the amended objection. Is that  
12 what you want?

13 MR. BURKS: Yes, 3, Proof of Claim 14.

14 MR. BAKER: You want the proof of claim?

15 MR. BURKS: Yeah.

16 THE COURT: What do you want to see, Mr. Burks?

17 MR. BAKER: The tax claim or the big claim? Okay,  
18 13 --

19 MR. FITZMAURICE: You're looking for the 2425  
20 proof of claim? Proof of claim --

21 MR. BAKER: Thirteen --

22 MR. BURKS: The one with the lien on it.

23 MR. FITZMAURICE: Proof of Claim Number 7 by your  
24 client?

25 THE COURT: Either your claim's registered or both

1 claim's registered. I can get that with you. Is that  
2 easier?

3 MR. BAKER: Here, look.

4 MR. BURKS: The WL claim with the lien attached to  
5 it, the one (indiscernible).

6 MR. SATHER: Seven.

7 MR. BURKS: Seven, so Proof of Claim Number 7. Do  
8 you have it?

9 (indiscernible).

10 MR. BURKS: I feel so compromised.

11 THE COURT: Well, this is just a horrible way to  
12 try a case. Okay, and that's the reason I enter the orders  
13 that I enter and say that technological problems are your  
14 problems. They're not my problems. And I'm trying to be  
15 really, really nice, but my patience is about to wear real  
16 thin. Okay? So what do you want to do --

17 MR. BURKS: Understood.

18 THE COURT: You would pull up what?

19 MR. BURKS: Proof of Claim Number 7.

20 THE COURT: Do you want me to pull up the claims  
21 register and then look at the claim?

22 MR. BURKS: Yes, please.

23 THE COURT: Claim 7?

24 MR. BURKS: Yes, please. And thank you for  
25 (indiscernible).

1 MR. FITZMAURICE: What page do you want to go to?

2 MR. BURKS: Mr. Choudhri, we're here, and then  
3 we'll just go to the deed of trust.

4 BY MR. BURKS:

5 Q Mr. Choudhri, do you see this claim, proof of claim?  
6 Can you enlarge the screen so you can see it?

7 A Yes.

8 Q All right, the judge is scrolling down to the attached  
9 deed of trust.

10 A Yes.

11 Q It has been posited by one witness or more that that is  
12 a fictitious lien that has no underlying basis. How do you  
13 respond to that?

14 A Mona Dajani with Pillsbury approved this transaction  
15 and the closing statement. This transaction was initially  
16 supposed to be a refi, and then the Bank of Kuwait wanted it  
17 to be a sale because of the lis pendens sales by Osama  
18 Abdullatif during litigation. And this is reflected on the  
19 closing statement from May 2020 -- May 2018.

20 (indiscernible) --

21 Q How much money --

22 MR. FITZMAURICE: Your Honor, Your Honor,  
23 objection. The witness is testifying, first of all, far  
24 beyond the scope of the question, but also, the contents of  
25 documents that we haven't seen and testifying -- I don't

1 want to represent -- testifying to the contents of documents  
2 that are not in evidence and that need to be, if that's what  
3 he's -- that's -- if he wants to testify about.

4 THE COURT: I'm not going to let him testify about  
5 dockets that are not before the Court that I haven't seen.

6 MR. BURKS: Mr. Choudhri --

7 THE COURT: He can answer your basic question as  
8 to why he disagrees with Mr. Murray's claims.

9 MR. BURKS: -- Mr. Choudhri, this is the last  
10 area, I believe, I'm going to ask you questions on, so I  
11 want -- the judge is going to scroll to show you what is  
12 attached to the proof of claim.

13 THE COURT: I'm there, but do you want to go  
14 further down? That's the deed of trust.

15 MR. BURKS: Right.

16 THE COURT: You want me to go further?

17 MR. BURKS: Yes, please. I want to see what's on  
18 this thing. All right, what's that?

19 THE COURT: Property description. Your list that  
20 they sent -- he's -- because he can't see it, but I can show  
21 it to you in a better way that you can tell me what you --

22 MR. BURKS: There, thank you.

23 THE COURT: He's not seeing this, though --

24 MR. BURKS: That's okay, that's okay.

25 THE COURT: So that's the end.

1 MR. BURKS: That's the property description I'm  
2 saying, so we have a proof of claim and note and a deed of  
3 trust, right?

4 THE COURT: Yes, proof of claim and the deed of  
5 trust is basically it. It's all that's attached to it. You  
6 tell me where you want me to go. I'll move it back over.  
7 Then he can see it.

8 MR. BURKS: And is there anything above that?

9 THE COURT: Just the proof of claim.

10 MR. BURKS: Okay, that.

11 BY MR. BURKS:

12 Q Mr. Choudhri, the judge is about to show you, and this  
13 is our last area, Mr. Choudhri, what happened in the  
14 transaction that's reflected in the document directly in  
15 front of you with the numbers on it? Was that real money?  
16 What happened?

17 A 2425 WL was the seller, the grantor of this property  
18 that went to Gallery 2425 Owner, LLC in May 2018. The --  
19 there was zero cash that came from the (indiscernible)  
20 Galleria 2425. The funds went towards a seller carry of  
21 \$14,780,000. That's reflected on the settlement statement  
22 in the closing of the underlying transaction, on the close.

23 Q So are you saying that before this transaction, the  
24 Debtor did not own 100 percent of the building? Is that  
25 what you're saying?

1 A No, 2425 WL did. 2425 WL is the seller in -- as of May  
2 2018, and then the buyer is Galleria 2425 Owner  
3 (indiscernible).

4 Q Understood, and this is the claim, this is the note and  
5 deed of trust --

6 MR. FITZMAURICE: Objection, Your Honor. Lack of  
7 foundation. There is no note.

8 THE COURT: There is no note, yeah. And he can't  
9 talk about the settlement statement, either.

10 MR. BURKS: Okay. Now I'm in the deed of trust,  
11 please.

12 BY MR. BURKS:

13 Q So don't refer -- the judge doesn't want you talking  
14 about documents that aren't in evidence. He's heard, the  
15 judge has heard you, as to what the basis for that deed of  
16 trust is. Is there anything else you want to say about that  
17 deed of trust, Mr. Choudhri?

18 MR. FITZMAURICE: Yeah, objection, Your Honor.  
19 Witness can't testify generically in the narrative just  
20 about whatever it is he wants to talk about a given topic.

21 MR. BURKS: On the deed of trust?

22 THE COURT: Again, I'm going to give him a little  
23 bit of leeway. Go ahead. Tell me, Mr. Choudhri.

24 THE WITNESS: Yes, Your Honor. It's what  
25 (indiscernible) -- its own (indiscernible) file, and they're



1 underlining, and there's a one memo that they did  
2 (indiscernible), and I believe it's one of the ECF numbers -  
3 -

4 THE COURT: And again, you can't testify as to  
5 stuff that's not in front of me.

6 THE WITNESS: (indiscernible).

7 THE COURT: He asked a generic question, so ask --  
8 answer it if you can, and if you can't, that's fine, too.

9 MR. BURKS: And speak as distinctly as you can,  
10 please, sir.

11 THE WITNESS: I'm sorry, I apologize, Mr. Burks.  
12 Can you repeat the question so I can get it right?

13 MR. BURKS: Right, so there's a deed of trust.  
14 I've heard what you said so far. I'm satisfied, but I don't  
15 count.

16 BY MR. BURKS:

17 Q Is there anybody -- is there anything else you want to  
18 say regarding a transaction, without referring to the  
19 documents, that underlies the granting of this deed of trust  
20 2425 WL? I understand what you've already said. Is there  
21 anything else?

22 A If I recall, it's like something like -- it's in one of  
23 the ECF numbers that are filed like 4 or 2 or something.  
24 (indiscernible) the objection. It's a settlement statement  
25 that the consideration (indiscernible) --

1 MR. FITZMAURICE: Objection, Your Honor. He's  
2 doing exactly --

3 THE COURT: You're doing exactly what I asked you  
4 not to do.

5 MR. BURKS: I know, I know.

6 THE COURT: So I'm going to cut you off. Ask the  
7 next question. I gave you leeway.

8 He blew it.

9 MR. BURKS: No further questions, Judge.

10 THE COURT: Thank you.

11 Mr. Fitzmaurice. Okay, and I'll offer you the  
12 same thing I offered Mr. Burks. If you need me to put  
13 something on the screen for you, I'm happy to do that.

14 MR. FITZMAURICE: Thank you, Your Honor. Well,  
15 I've been challenged all day, so I was going to give it a  
16 shot. If I lock into GoTo Meeting --

17 THE COURT: You should be able to share your  
18 screen.

19 MR. FITZMAURICE: And I can -- Mr. Choudhri will  
20 be able to hear me through this microphone or do I need to  
21 be on a phone?

22 THE COURT: No. No, no. That's everything. So  
23 if you look -- just follow me on the screen --

24 THE WITNESS: I can hear you very well.

25 THE COURT: All right, there -- here it says

1 "share." You'll click on "share." It'll show "share  
2 screen," and then you'll just hit that button, and you'll be  
3 able to share.

4 There you go.

5 MR. FITZMAURICE: All right.

6 THE COURT: You're the wizard today of technology.

7 MR. FITZMAURICE: Well, all evidence to the  
8 contrary this morning, Your Honor.

9 CROSS-EXAMINATION OF ALI CHOUDHRI

10 BY MR. FITZMAURICE:

11 Q Mr. Choudhri, I'm showing you a copy of the proof of  
12 claim for Claim 7-1. Do you see that on the screen?

13 A Yes.

14 Q And this is a proof of claim that was filed by 2425 WL.  
15 Is that right?

16 A Yes.

17 Q So I'm going to scroll through the -- it looks like 18  
18 pages of this PDF. And my question at the end is, I'm going  
19 to ask you if you've seen, in any of the documents that are  
20 here attached to the proof of claim, a promissory note.

21 Okay?

22 A No.

23 Q I'll keep going. We'll go all the way to the end. And  
24 I'll pause here for a second. Is that your signature?

25 A Yes.

1 Q At the time that -- at the time this proof of claim was  
2 signed by you, were you the manager of 2425 WL?

3 A Yes.

4 Q I'll keep scrolling. We'll look for the note.

5 A I don't believe the note is there.

6 Q So you think there's no note attached to the deed of  
7 trust. Is that right?

8 A There's no note here on this proof of claim.

9 Q Okay. So let me ask you another question about the  
10 deed of trust that's attached to the proof of claim. And I  
11 apologize. I'm just going to scroll to the point that I'm  
12 allowed to show you. Okay, is that your signature here, Mr.  
13 Choudhri, under grant -- ultimately under "grantor?"

14 A Yes.

15 Q Do you see here it says, the text on the document says  
16 "this instrument was acknowledged before me this," blank,  
17 "day of," blank, "2021?" Do you see that?

18 A Yes.

19 Q And then it's signed?

20 A Yes.

21 Q Is that because this group -- this deed of trust was  
22 executed in 2021?

23 A Yes, that's why.

24 MR. FITZMAURICE: Thank you, sir. No further  
25 questions.

1 THE COURT: All right, thank you.

2 Mr. Burks?

3 RE-DIRECT EXAMINATION OF ALI CHOUDHRI

4 BY MR. BURKS:

5 Q Mr. Choudhri, on that proof of claim, does the note  
6 exist?

7 A Yes.

8 Q Did you give a copy of it to Mr. Sather?

9 A Yes.

10 Q Did you give a copy of it to Mr. Sather in time to file  
11 the amended proof of claim?

12 MR. FITZMAURICE: Objection, Your Honor. Lack of  
13 foundation. There is no amended proof of claim on file.

14 THE COURT: I'll sustain the objection.

15 THE WITNESS: (indiscernible) --

16 BY MR. BURKS:

17 Q Have you provided Mr. Sather a copy of the note to put  
18 forth as an exhibit in the proof of claim objection  
19 proceeding?

20 MR. FITZMAURICE: Objection, Your Honor. Lack of  
21 foundation.

22 THE COURT: I'll overrule the objection.

23 BY MR. BURKS:

24 Q Have you provided a copy of the note to Mr. Sather for  
25 use in the objection of claim proceeding?

1 A Yes. Yes.

2 MR. BURKS: Nothing further, Judge.

3 THE COURT: All right, Mr. Fitzmaurice?

4 MR. FITZMAURICE: Nothing, Your Honor.

5 THE COURT: All right, thank you.

6 Mr. Burks, you have a witness.

7 MR. BURKS: Who's on the screen other than Mr. --

8 THE COURT: Mr. Choudhri.

9 MR. BURKS: And that's it?

10 THE COURT: That's it.

11 MR. BURKS: May I look in the hallway, please?

12 THE COURT: No, I mean, I've been really, really  
13 patient. Do you rest?

14 MR. BURKS: I rest --

15 THE COURT: Mr. Baker, do you rest?

16 MR. BURKS: -- Your Honor.

17 MR. BAKER: Nothing further, Your Honor.

18 THE COURT: Thank you. All right, I think that  
19 concludes at least the evidence, which allows me to give you  
20 some time to argue. Mr. Troop and Mr. Fitzmaurice, he's  
21 going to argue for --

22 MR. FITZMAURICE: Your Honor, Mr. Troop will, I  
23 think, begin and Mr. Akuffo as well will present with  
24 respect to the confirmation standards.

25 THE COURT: Okay, that's fine. I'd like to limit

1 argument. I think I've heard what I need to hear, but I  
2 want to give you time. I'm going to limit each side to 15  
3 minutes. All right?

4 MR. BURKS: Thank you.

5 THE COURT: I'll give you five minutes to close.  
6 All right? Thank you. So if you want to start now, you  
7 may, or do you want a few minutes?

8 MR. BURKS: Wait, did you say 15 or five?

9 THE COURT: Fifteen.

10 MR. BURKS: Is there any way that we can take a  
11 very quick break that I need? I --

12 THE COURT: I'm fine breaking if you guys want to  
13 break.

14 MR. BURKS: I just have to run to the restroom,  
15 frankly.

16 MR. TROOP: I don't mind, Your Honor, but I  
17 thought when we spoke this morning we decided that as the  
18 moving party I would go last.

19 THE COURT: Mm hm, well, you can do that, or you  
20 can open and close if you want. It's your choice.

21 MR. TROOP: Oh, that's what you meant by open and  
22 close, by 15 and five?

23 THE COURT: Yeah.

24 MR. TROOP: And it won't further (indiscernible).

25 THE COURT: Okay, that's fine. And let's do this,

1 it's 3:53. I'll come back and four o'clock. I'll let Mr.  
2 Troop start, and then we'll go from there. Thank you.

3 CLERK: All rise.

4 (Recess)

5 CLERK: All rise.

6 THE COURT: All right. We're back on the record  
7 in 23-34815. Mr. Troop, you may proceed.

8 MR. TROOP: Thank you, Your Honor. Again, Andrew  
9 Troop from Pillsbury on behalf of National Bank of Kuwait.

10 Your Honor, we're going to try to stick to three  
11 minutes and get Mr. Akuffo the first opportunity he's ever  
12 had to present a confirmation order.

13 THE COURT: That's fine. I'd be happy to have him  
14 present.

15 MR. TROOP: Thank you.

16 THE COURT: That said, it's always an exciting  
17 time when you do it for the first time. Go ahead.

18 MR. TROOP: He's getting an interesting case as  
19 well.

20 Your Honor, when we started this morning, I talked  
21 to you primarily about two things, the two things of focus.  
22 The first thing that I talked about is that I thought that  
23 there was an objection that was going -- that was being  
24 raised with regard to good faith. And I don't think there's  
25 been any evidence presented with respect to a lack of good



1 faith, and -- to the contrary -- only evidence that supports  
2 a finding of good faith.

3 A plan was proposed in good faith. It was not  
4 proposed in any means prohibited by law. It was  
5 transparent. It was negotiated with the Chapter 11 trustee.  
6 It was sent out to both -- it was sent out to both properly.  
7 The only witness with regard to notice, I believe it was  
8 clearly shown that he actually received our plan, not  
9 theirs. Your Honor, nothing against him. It's just -- Your  
10 Honor, it's a matter of circumstance.

11 Your Honor, the plan is in good faith because it  
12 seeks to maximize what would otherwise be a truly insolvent  
13 state. And yes, are there things that NBK gets in exchange  
14 for that? It's a release of estate claims. It gets  
15 protection against anyone breaking estate claims. The  
16 argument that their releases are broader than that, I  
17 disagree with, but if there's concern about that, Your  
18 Honor, we'll make it as crystal clear as you want it in the  
19 confirmation order.

20 Your Honor, there are also other objections  
21 raised, and I talked this morning about three that were made  
22 untimely. One of the ones that was made untimely had to do  
23 with, indirectly, 1129(a)(10) and whether there is  
24 (indiscernible) impaired class.

25 Mr. Burks, I think, tried to make two points

1 today. He tried to say that NBK's claim was not impaired  
2 because it accepts its treatment under the plan, but he'd be  
3 -- that's just nonsensical Your Honor. You'd remember  
4 having an impaired accepting class. You would never have an  
5 impaired accepting class. And the fact that (indiscernible)  
6 doesn't change the fact that our legal rights are being  
7 altered under the plan. Our payment rights are being  
8 altered under the plan. (indiscernible) not we're impaired.

9 The second thing is there's no doubt that the  
10 votes were cast, and cast affirmatively and cast timely. So  
11 the argument is that there was an objection pending, which  
12 shouldn't involve the case here, I if can call it that, is  
13 that there is a valid claim held by National Bank of Kuwait  
14 or you would not have allowed it to credit it on Monday.

15 To move forward, Your Honor, a proof of claim is  
16 prima facie evidence of the validity of the claim. And yes,  
17 an objection raises that question, but it has to raise  
18 sufficient issues to rebut the prima facie validity of the  
19 claim. And again on Monday, you effectively found it does  
20 not. It does not.

21 A technical issue -- which it may be a technical  
22 issue at best -- to not stand in the way of confirmation of  
23 this plan. But if you have any concern at the end, Your  
24 Honor, Bankruptcy Rule 3018 allows you to estimate for  
25 voting purposes the claims. It is on notice in hearing, but

1 we all know the code says that notice in hearing -- it's  
2 notice in hearing justified by the circumstances. Here  
3 there's no question that these parties, who are now more  
4 than two full days of trial, that tried to raise disputes  
5 about those claims. And Your Honor, I think they did so  
6 unsuccessfully.

7 So if there's any concern, I believe you can just  
8 allow the claims for voting purposes in the form in which  
9 they were presented for the votes. And then if you confirm  
10 the plan, the impact of the plan will be what it is with  
11 respect to those claims.

12 I went way over my three minutes, Your Honor. I  
13 apologize.

14 THE COURT: That's fine.

15 MR. TROOP: Mr. Akuffo.

16 MR. AKUFFO: Good afternoon, Your Honor. Kwame  
17 Akuffo from Pillsbury on behalf of the National Bank of  
18 Kuwait. (indiscernible) and secured lender to the debtor.

19 Mr. Troop already, you know, went through a couple  
20 of plan confirmation requirements, and so I'm going to be  
21 brief with my presentation and just focus on a couple of  
22 issues that were discussed today, one being clarification,  
23 the other being cram down with respect to whether or not  
24 there's unfair discrimination against the rejected classes,  
25 which include Class 6 and 8; and lastly the permissive

1 provisions that -- excuse me -- the permissive provisions  
2 related to Section 1123(b).

3 So first with respect to classification, our  
4 requirements, Your Honor, we believe that Section 1122's  
5 classification requirements are met because our Goal 3 of  
6 the plan designates a class of claims and interest under the  
7 plan.

8 Briefly, I'm just going to take us through these  
9 classes. Again, Class 1 is other secured claims. Class 2  
10 is other priority claims. Class 3 is the NBK tax claim.  
11 Class 4 is NBK secure claim. Class 5(a) and 5 -- Class 5(a)  
12 is general -- trade general unsecured claims. Class 5(b) is  
13 other general unsecured claims. Class 6 is insider claims.  
14 Class 7 is subordinated claims, and Class 8 is interest of  
15 the debtor.

16 We believe that the classifications in the plan is  
17 rational, and they're valid, legal, and factual reasons that  
18 justify classification.

19 With respect to Class 1, again, these classes hold  
20 secured claims against the estate, and particularly they  
21 cover secured real estate tax claims held by certain taxing  
22 authorities and (indiscernible).

23 Class 2 claims consist of non-administrative  
24 expense claims that I'll classify separately because they  
25 are priority claims under Section 507 of the bankruptcy

1 code.

2 And Class 3 advocates the sole holder of that  
3 claim and onto the plan. NBK will receive -- will receive  
4 value for its claim under Class 3 if it's not the winning  
5 bidder of the property. But to the extent that it is the  
6 winning bidder of the property at the auction on Friday,  
7 then it has agreed to waive its claim.

8 NBK is also the sole holder of our claim in Class  
9 4, which is based on unsecured claim under the loan  
10 documents that were -- under the loan documents between NBK  
11 and the debtor.

12 Class 5, as you've heard throughout today,  
13 consists of trade, unsecured claims arising from maintenance  
14 and related work. We particularly classed 5 as claims  
15 separately because the trustee recommended that we do so,  
16 and these claims are, again, based on secure claims that  
17 were payable to trade to allow them to continue to provide  
18 services to the estate's main assets, which are other  
19 property.

20 With respect to Class 5(b), these are non-trade  
21 unsecured claims, and they consist of the debtor's former  
22 attorneys as well as NBK's deficiency claim based on its  
23 loan to the debtor.

24 With respect to Class 6, which has been a hot-  
25 button issue, they were separately classified because they

1 applied to the debtor's affiliates who are insiders,  
2 particularly 2425WL and general.

3 Your Honor, it makes no sense to place these  
4 entities into classes under the subclasses -- under the  
5 subclasses, meaning Classes 5(a) and 5(b), because these  
6 classes -- again, meaning 5(a) and 5(b) -- are going -- part  
7 of their recovery are pro rata share interests and  
8 litigation trust assets, and to the extent -- and they're  
9 litigation targets. And to the extent that recovery -- to  
10 the extent that there are recoveries against these potential  
11 litigation targets -- again, meaning Jetall and 2425WL -- it  
12 makes no sense to recover money against them and then, you  
13 know, have them actually receive recovery from -- under  
14 those classes.

15 And so that's the basis because we separately  
16 classified them. And as you've heard all throughout today,  
17 Your Honor, there are pending objections to these claims,  
18 which are highly suspect. And those objections are found at  
19 ECF Number 402 and 404.

20 Moving on to Section 1129(d)'s cram down  
21 requirements, we believe that there's no inferred  
22 discrimination here against the rejecting classes,  
23 particularly Classes 6 and 8, again for the same reasons  
24 that we separately classified Class 6, there's no inferred  
25 discrimination against them.

1           Again, these are -- this class covers -- this  
2    class includes Jetall and 2425WL's claims. And again,  
3    placing these insiders in classes 5(b), for example, does  
4    not make sense because to the extent that there are  
5    recoveries against them through a litigation, they shouldn't  
6    be able to share those recoveries for that reason.

7           And in terms of distribution to creditors in Class  
8    5(a), it's not unfair to do so because, again, these Class  
9    5(a) trade creditors are receiving value because they  
10   provided critical services to the estate by helping maintain  
11   its -- by helping to maintain the value of the property.

12           And the bottom line here is that NBK can decide  
13   who gets to get paid under its plan, especially after the  
14   debtor failed to pay the loan back to NBK a couple of years  
15   ago. That was the issue out of the loan documents, Your  
16   Honor.

17           I'm sorry if I'm moving too fast.

18           THE COURT: That's fine. You still have four  
19   minutes. You're good to go.

20           MR. AKUFFO: Okay. With respect to fair and  
21   equitable, again, simply the plan is not for -- the plan is  
22   fair and equitable to holders of claims in Classes 6 and 8  
23   because there's no value available to make distributions to  
24   these creditors, and the plan does not provide for  
25   recoveries for claims or interests junior to Classes 6.

1           Lastly, the permissive requirements of Section  
2   1123(b) are met, particularly with respect to Section  
3   1123(b) (3) (a), it requires that a plan may settle an action  
4   that belongs to the estate.

5           For the estate release, as you've heard today, the  
6   debtor commenced a loss against NBK in state court based on  
7   breach of a settlement agreement and has alleged tortious  
8   interference and lender liability claims agent NBK. That  
9   state court lawsuit was removed -- excuse me. That lawsuit  
10   was removed from state court to this court, and after the  
11   trustee was appointed in February, he was substituted as  
12   Plaintiff in this lawsuit.

13           Today, Your Honor, you heard testimony from the  
14   trustee that after you entered the cash collateral order  
15   that allowed him to investigate claims and challenge the  
16   amount in allowance of NBK's claims against the debtor under  
17   their own documents, he conducted an exhaustive  
18   investigation and assessment of claims against NBK.

19           For example, he spoke to Debtor's current and  
20   former counsel. He spoke to other parties, including Mr.  
21   Caldwell, Ms. Azeemeh; and he requested documents from the  
22   debtor. And I believe he mentioned that they did not  
23   produce certain documents. And to the extent that they did  
24   produce certain documents, they did not provide any factual  
25   support to -- any factual support to support the lawsuit



1 that is pending against NBK.

2 And so after his exhaustive investigation of NBK  
3 into its -- into the debtor's claims against the bank as  
4 well as to determine whether or not NBK has a valid claim  
5 under the loan documents, he determined that there was no  
6 basis -- there was no -- excuse me -- he determined that  
7 there was -- the claims asserted by the debtor lacked any  
8 sufficient merit and that it was the best interest -- it was  
9 not in the best interest of the estate to pursue claims  
10 against the estate.

11 Now, even if the trustee had pursued litigation  
12 against NBK, he would've had to rely on testimony from Mr.  
13 Choudhri, and you've heard today that the trustee determined  
14 that any testimony by Mr. Choudhri is not truthful.

15 And so in return for the estate release, NBK has  
16 agreed to reduce its deficiency claim to 90 percent of -- 90  
17 percent of that amount in Class 5(b). It has also agreed to  
18 pay administrative expenses -- expense claims in full, and  
19 has also agreed to fund the liquidation trust for, I  
20 believe, \$150,000.

21 And lastly, based on the trustee's testimony  
22 today, he determined it's reasonable business judgment that  
23 the estate release is fair and equitable to the estate. And  
24 again, it's in the best interest of the estate. And for  
25 those reasons, Your Honor, we believe that the estate

1 release should be approved.

2 With respect to exculpation, we -- exculpation in  
3 our goal 9.C of the plan should be approved. Again, today  
4 you heard that we received comments from the U.S. Trustee  
5 regarding the breadth of the exculpatory party definition  
6 under the plan that included NDK and related parties. This  
7 exculpation definition has been modified to apply to the  
8 trustee and its related parties only, and that modification  
9 is reflected in Paragraph 59 of the revised proposed order  
10 filed at ECF Number 528. So for that reason, Your Honor, we  
11 believe that the exculpation under the plan should be  
12 approved.

13 And lastly, the injunction and gatekeeper  
14 provision, we believe that these injunction provisions  
15 should be approved.

16 With respect to the gatekeeper provision, it  
17 simply requires that any party with a colorable claim come  
18 to this Court and confirm that that colorable claim --  
19 excuse me. Let me retract.

20 The gatekeeping provision basically is designed to  
21 enforce the estate release that are being -- that is being --  
22 - the estate release under the plan, and to the extent that  
23 any party has a colorable claim, it requires that party to  
24 come to this court to determine whether or not there's a  
25 basis to go ahead and pursue that claim against a release

1 party. And to the extent that those claims, again, are  
2 released under the plan, there's no reason to do so.

3 I also want to point out that the gatekeeper  
4 provision is not a third-party release. The injunction and  
5 the gatekeeper provision is consistent with Fifth Circuit  
6 law.

7 And so for the brief reasons that I've explained  
8 on the record, Your Honor, I believe that -- excuse me --  
9 NKB believes that the plan should be confirmed.

10 THE COURT: All right. Thank you, sir.

11 All right. Mr. Burks?

12 MR. TROOP: Your Honor, we were asked to advise  
13 you that Ms. Whitworth, the U.S. Trustee, might want to  
14 speak.

15 THE COURT: She's on the phone, and she's unmuted,  
16 and I'm sure she'll want to say something at the end, and  
17 I'm going to give her the opportunity. Thank you.

18 MR. TROOP: Thank you.

19 THE COURT: Mr. Burks, they did run over by a few  
20 minutes. If you run over by a few minutes, I'll give you  
21 the same courtesy.

22 MR. BURKS: How much time do I have, Your Honor?

23 THE COURT: 15 minutes plus a couple of minutes  
24 grace.

25 MR. BURKS: It's been a while since I heard an

1 accomplished bankruptcy attorney tell the Court that any  
2 requirement for confirmation is just technical. It's not  
3 technical. It's a requirement, 1129(a)(1) through (16) have  
4 to be met. Period.

5 I don't know why. I assume that Counsel had a  
6 reason for not estimating the claim. I assume that they  
7 read *In re Bressler*, which is the only opinion in this  
8 district regarding whether or not -- not whether or not you  
9 credit bid, not whether or not you have standing, but  
10 whether your vote can be the sole accepting vote for  
11 purposes of 1129(a)(10).

12 It's more than a technicality here. In *re*  
13 *Bressler*, which is written by Judge Rodriguez at 2021 Bankr.  
14 LEXIS 64, says, "Here's what you have to do if you have a  
15 claim -- proof of claim that is objected to." You don't  
16 have to try the proof of claim. You don't get to try the  
17 proof of claim. It's an objected-to claim. It's not a  
18 deemed-allowed claim.

19 Why they didn't come to you already and ask you to  
20 estimate it -- it's a strategy, I guess. But to somehow  
21 deem the fact that they're entitled to credit bid to somehow  
22 mean that they are -- you know, one allowed claim for  
23 purposes of 1129(a)(10), that's going to be new law, and  
24 they're asking you to make new law. It's not a  
25 technicality. It's a requirement under 1129(a).

1 THE COURT: So let me understand your arguments  
2 first. Your argument is that because the claim was objected  
3 to, they simply cannot go without me making some sort of  
4 claims estimation?

5 MR. BURKS: After notice in hearing, they need an  
6 allowed -- they need an estimated claim in some amount after  
7 notice in hearing. They make the motion. We get a fair  
8 opportunity to object to that motion. Yes, Your Honor.

9 THE COURT: Okay. Thank you. Go ahead.

10 MR. BURKS: Additionally, I was interested by  
11 Counsel's opening argument where he said that somehow, the  
12 fact that the proponent accepted the plan, somehow that  
13 makes them unimpaired. I never argued that. That would be  
14 an astonishing argument.

15 What I said was that if you only have one  
16 "impaired claim," and it's not that the bank accepted it --  
17 that's not what I'm talking about -- it's that they proposed  
18 their own treatment under the note, which they're allowed to  
19 do. They can discount that note. They can modify that  
20 note. They can propose anything they want, and it's under  
21 the note that they're doing it.

22 So I'm not saying that there's a proponent who  
23 accepted it. I'm saying the only accepting class is the  
24 proponent who's voluntarily pursued to the note, said,  
25 "Here's how we're going to get paid to the note," and I'm

1 saying that is not impairment. That's -- that is somebody  
2 discounting the note just like anyone can -- the bank can  
3 settle the note. You know, the bank can waive foreclosure.  
4 The bank can call off the auction. They can do anything  
5 they want under that note and deed of trust, and they've  
6 done it. That's not impairment.

7 Moving on to the next issues, I'm really  
8 interested by Counsel's portrayal of the abandonment. He  
9 said, "Gee, they just haven't made any argument that it  
10 wasn't proposed in good faith."

11 To the contrary. The entire plan is based on bad  
12 faith proposal, and here's why. I don't know what the  
13 counsel here in this room or the Court thought the purpose  
14 of my questions to Mr. Carter and Chapter 11 trustee were  
15 regarding the -- were regarding the negotiation of the plan  
16 terms, but I'll tell you what it was. We all read In re  
17 Cajun Electric. We know what the three prongs from 9019,  
18 and we know what the Fifth Circuit said. A balance to  
19 leverage negotiation, a balanced negotiation is critical for  
20 acceptance of any settlement.

21 This was a highly, highly leveraged negotiation  
22 where the trustee, frankly, didn't have a chance. He  
23 bravely testified as to how he fought for things that he  
24 wanted to, but the bottom line was he had once choice, and  
25 one choice only for a plan.

1           You talk about an uneven playing field. It  
2       doesn't even come close. He wanted different provisions for  
3       the settlement and the payment amount. He wanted different  
4       provisions for the credit bid amount. He even caved in, in  
5       terms of not testing the true market value of these three  
6       claims against the estate. And we can all speculate whether  
7       or not it was reasonable for him to do so.

8           In this highly leveraged and charged situation  
9       that he was in, in negotiating the plan, reasonable or  
10      unreasonable, no choice. No choice. And that is one of the  
11      biggest arguments or problems that we have with this plan.

12          Look at the classifications. Let's just  
13      understand what the classification problems here are. You  
14      have a WL lien -- second lien. Well, first -- here's the  
15      first problem. You have a lien from -- a second lien from  
16      2425WL. You have proof of claim with a deed of trust  
17      attached. It's filed. Right now, you couldn't go to a  
18      closing -- a title company right now and sell that first  
19      lien if you tried because there's deed of trust on it. What  
20      would you do in state court? You could only file a petition  
21      for quiet title. Then the party would -- Mr. Choudhri  
22      would, on behalf of the entity, bring the note. You'd have  
23      a jury trial as to the validity of the claim and liquidity  
24      of the lien, and whether or not you can quiet title.

25          In bankruptcy court, what do you do? You file a

1 proof of claim. It's deemed allowed until it's objected to.  
2 Then you have a trial. You get to try it. You try whether  
3 or not on all the evidence that's available, that's  
4 admissible, relevant evidence. You get to determine whether  
5 or not that lien is valid, whether or not there's a debt  
6 owed, and then ultimately whether or not there's cause to  
7 subordinate it. They want to pass all that. They want to  
8 cut through all that in this plan. No way.

9 But it goes more. It goes further than that,  
10 Judge. They don't want any unsecured claim allowed at all.  
11 We not only void the lien. Void the claim, and don't dare  
12 put it in with a deficiency claim of the first lienholder  
13 because that will then actually split the pool that's  
14 available for the first lien deficiency. That's unfair  
15 discrimination at its quintessential basis. At least,  
16 that's my view of it.

17 Let's look at the trade creditors. You have -- we  
18 have the claim of (indiscernible) Inc. It was at Document  
19 Number 496-1. We talked about the proof of claim. It had a  
20 lien attached to it. We talked about that that lien was  
21 filed after 2425WL's lien -- excuse me -- after the Bank of  
22 Kuwait's lien but before -- excuse me -- after both the  
23 first lien and WL's lien, yet the response of the trustee  
24 was -- or Mr. Carter was, "Yeah. That's going to be paid as  
25 another security claim."



1                   Now, wait a minute. A claim filed after 2425L is  
2     going to be paid before 2425L. Hm. All right. And in  
3     full. What about those trade creditors?

4                   See, the trade creditors are different than a  
5     lienholder. They're not being treated as a secure claim,  
6     but they're getting 70 cents on the dollar. Why's that  
7     important to me representing 2425L? Well, it's important to  
8     me because my client's getting zero on their unsecured  
9     claim, and trade creditors without liens are getting 70  
10    percent. Unfair classification.

11                  Now, they can say, "Wait a minute. We're giving  
12    the insiders zero." You can't go through due process of  
13    claim allowance and claim trials and just say this lien is  
14    invalid, and the claim underneath it is invalid. There  
15    isn't hope. You'll hear it. You'll hear the evidence and  
16    decide. But they're asking you to forgo all of that. You  
17    have a hearing on the subordination. You have a hearing on  
18    the removed case, whether or not to remand it. There's  
19    litigation to be done.

20                  Is it doubtful in anybody's mind? Not in my  
21    client's and not in my client's attorney's. Of course, the  
22    bank will tell you it's frivolous. Rule that way, but don't  
23    cut off the litigation rights right here and now today. But  
24    they want you to, and they told you that that release is  
25    pretty darn important for \$3.7 million.

1           Now, do we think -- do we know what the value of  
2     the causes of action are? No. Nobody does. We have  
3     thoughts. Trustee has an opinion, but he never tested that  
4     on the market, and the reason he didn't test it is because  
5     he can't because otherwise, he doesn't get the NBK to play  
6     ball. That's bad faith. Excuse me. That's not proposing a  
7     plan in good faith. That's restricting the trustee's time  
8     and the trustee's hands on what to do.

9           Classification is fatal here. Could it be fixed?  
10    Yeah, probably. Could you estimate a claim procedurally,  
11    just file a motion, give a few days' notice, have a hearing  
12    on estimation, and you fix these technicalities? Maybe.  
13    Probably some. The classification though would look very  
14    different. You'd have the NBK claim paired other claims.  
15    You'd have the trade creditor claims in the pool of other  
16    unsecured creditors. You'd have a different looking plan on  
17    distribution, Judge.

18           These aren't technicalities. Unfair  
19    discrimination, fair and equitable as far as the liquidation  
20    test. You have no idea what the value of those claims are,  
21    and frankly, neither do I, and if you confirm this plan,  
22    you'll never find out.

23           I hope -- now, what do you do? What do you --  
24    what would you do here? I mean, we have technical problems.  
25    I'm not going to reread Mr. -- Steve's objection or the

1 debtor's objection, but what I know you're going to do is  
2 you're going to go down -- you're going to take -- go in  
3 Chambers, and you're going to go down 1 through 16 and look  
4 at 29(a). And if you can't check the 16 boxes, the code  
5 says you can't conform. If you can check the 16 boxes, you  
6 can confirm. As a matter of fact, you shall confirm if you  
7 can check the boxes.

8           It's not that a plan isn't confirmable. The  
9 auction can go forward. The trustee said that it's going to  
10 look the same one way or the other on the auction, but the  
11 releases shouldn't go forward. No way. I mean, I'm sorry.  
12 That just violates Fifth Circuit law. You can say it  
13 doesn't, but just read the releases. Gatekeeper?  
14 Gatekeeper for a non-debtor or somebody who's not essential  
15 to reorganize the debtor, never been done. You'll be  
16 creating new law against this circuit precedent.

17           These are not technical problems. These are real.  
18 Follow the law of the Fifth Circuit. Follow the law in  
19 (indiscernible).

20           Lastly, I want to thank you personally for hearing  
21 all the evidence, including Mr. Choudhri's opinions. Unlike  
22 anyone else, I think they were critical in terms of there's  
23 more than one side. There's more than one story on these  
24 causes of action. But if you confirm today, we'll never  
25 know what their actual value is. That release is the

1 problem of this plan. That classification is the problem in  
2 that plan. 1129(a)(8) -- (10) is a problem with this plan.

3 Thank you, Judge. I'm out of time.

4 THE COURT: All right. Thank you, Mr. Burks.

5 I'm going to turn now to Ms. Whitworth who  
6 indicated she may have something to say. I'll let her say  
7 whatever she needs to say before I go back to Mr. Troop.

8 Ms. Whitworth?

9 MS. WHITWORTH: Thank you, Judge. Yes. Thank  
10 you, Judge. Jana Whitworth on behalf of the United States  
11 Trustee.

12 Your Honor, I just wanted to make a short  
13 announcement on behalf of my client. We did not file a  
14 formal objection. We did however submit a series of  
15 requested revisions. Those are reflected as counsel  
16 (indiscernible) out in Paragraph 59 of the proposed orders  
17 uploaded at 528 that correctly in the trustee's opinion  
18 limits the definition of exculpated party to Chapter 11  
19 trustee (indiscernible) professionals and people who were  
20 working on his behalf.

21 There were a couple of other revisions in  
22 Paragraph 59, 29 -- or excuse me -- 29 and 73 that relate to  
23 post-effective date reporting by the liquidation trustee and  
24 his responsibility for paying quarterly fees.

25 Other than that, Your Honor, the U.S. trustee does

1 not oppose entry of the -- a proposed confirmation order at  
2 528. Thank you, Your Honor. I appreciate your time.

3 THE COURT: I'm just going to look at something  
4 really quick to make sure that I have that real quick.

5 MS. WHITWORTH: I believe it was attached at the  
6 exhibit to the --

7 THE COURT: Yeah. That's what I want to make  
8 sure. I saw the --

9 MS. WHITWORTH: -- document.

10 THE COURT: I'm sorry. The bandwidth is taking a  
11 minute to come up. It must be pretty large.

12 MS. WHITWORTH: It's 100 pages.

13 THE COURT: Yeah. So it's going to take a minute.  
14 Okay.

15 MR. BURKS: Your proposed order is 100 pages?

16 MS. WHITWORTH: No. It's the notice that attaches  
17 --

18 THE COURT: It's the plan, and everything's  
19 attached to it.

20 MS. WHITWORTH: Correct.

21 THE COURT: It's 95 pages long. Can you tell me  
22 where -- what page your language starts on? Oh, there it  
23 is. I found it. Don't worry. Okay. All right. Thank you  
24 for the announcement. I appreciate it.

25 MS. WHITWORTH: Thank you, Judge.

1 THE COURT: All right. Mr. Baker, is there  
2 something you want to say?

3 MR. BAKER: Just a very short close, Your Honor.

4 THE COURT: Okay. You've silently made it till  
5 the very end, but go ahead.

6 MR. BAKER: I apologize. I was somewhat surprised  
7 because Mr. Troop got up here and said, "Well, you can  
8 estimate the claims," but they've never filed a motion to  
9 estimate the claims. They're just showing up here today  
10 saying, "Please estimate the claims," without ever filing a  
11 motion. That's --

12 THE COURT: I have to tell you that I have found  
13 at least a couple of cases from the early '90s that say I  
14 don't need to. So I think that potentially, there's a 1991  
15 case that says -- so I'm not sure I agree with that  
16 proposition, but I have looked at case -- I looked at some  
17 on the break. I'll have to do a little bit more digging on  
18 it, but there is some Southern District caselaw from the  
19 early '90s that says I can basically confirm the plan  
20 without estimating the claims.

21 MR. BAKER: Okay.

22 THE COURT: Okay. Go ahead.

23 MR. BAKER: The other thing that I would point  
24 out, under the plan, tax claims that NBK is claiming they  
25 own would get paid to NBK. Now, under the confidential --

1 and this hasn't been pointed out. Confidential settlement  
2 agreement, which is part of the record, goes through and  
3 says, "Okay. There's a liquidated damages provision if it  
4 is breached." What is it? NBK, it's \$800,000. They're not  
5 supposed to keep the tax claims. Those are supposed to go  
6 back to Mr. Choudhri. So the plan doesn't comply with  
7 what's in the confidential settlement agreement.

8           There is no payment based on the testimony to any  
9 of the creditors with rejected leases. It was asked --  
10 there's nothing. So what happens to the rejected leases  
11 that are deemed rejected if NBK is the bidder, and the plan  
12 provides that they all are rejected? They just get tossed  
13 out in the window.

14           It's interesting. There are only three classes  
15 that can vote: NBK on its secured claim, the general  
16 unsecured creditors of which -- the way NBK has drafted it -  
17 - they have 90 percent of it because they've excluded  
18 2425WL, and the trade creditors. That's it. That's -- two  
19 of the three classes are controlled by NBK. Again, you go  
20 back to what Mr. Burks's argument. That seems to be a real  
21 problem. Was this proposed in good faith?

22           And I'm going to go back and just tie in a little  
23 bit into what Mr. Burks was talking about as far as the  
24 claims against NBK.

25           The other thing I found interesting is that Mr.

1 Murray did not get any damage models from either Mr.  
2 Alexander or Mr. Wetwiska, specifically Mr. Alexander. So I  
3 didn't get any. I don't know. He never asked him for any.  
4 He never got far enough into his investigation to determine  
5 that.

6 At some point, if Mr. Alexander really is the  
7 expert that he appears to be, the question should've been  
8 asked by Mr. Murray to him, "What do you think we could  
9 recover on this?" He didn't make any effort to ask that  
10 question. Never probed. Never even went into talking about  
11 it.

12 And that's not an issue of Mr. Choudhri. That's  
13 an issue of a gentleman who was one of the two people  
14 nominated to be president of the State Bar of Texas last  
15 year who has the largest lender liability judgment in the  
16 last 10 years who said this is a good claim, but he never  
17 bothered to ask, "How much do you think you could recover on  
18 it?" That's surprising to me.

19 And Your Honor, I'll just conclude again with the  
20 idea whether you estimate their claims or not, there is a  
21 huge issue about what are the value of the claims against  
22 NBK? Thank you.

23 THE COURT: All right. Thank you. All right.  
24 Mr. Shannon, since the trustees had their -- the people  
25 appointed the figure of the trustee, do you want to say



1 anything in response? Then I'll go back to Mr. Troop, and  
2 then I think we're done.

3 MR. SHANNON: Your Honor, I'm just going to  
4 reiterate that the trustee does support confirmation. I  
5 believe that the evidence both yesterday and today confirmed  
6 that the trustee engaged in an investigation that was  
7 serious, that was focused, and that was determined to make  
8 an evaluation. That's what he's done here.

9 As far as the particular -- you know, the  
10 particular requirements of confirmation, I'm going to leave  
11 that to NBK. It's their plan. But I do just want to say  
12 that for the record.

13 THE COURT: Thank you.

14 All right. Mr. Troop.

15 MR. TROOP: Thank you, Your Honor. Your Honor, I  
16 think that this case feels as though it has had a life that  
17 has extended beyond its many months before you, and that is  
18 particularly true with regard to NBK in this matter.

19 This Chapter 11 case is the result of -- and the  
20 evidence clearly shows this -- repeated efforts by the  
21 debtor and its principals to get this property for less and  
22 less and less than what they promised they would pay back on  
23 the loan.

24 And we're here, Your Honor, because Chapter 11 --  
25 or had you converted the case at that point, Chapter 7 --

1 would've provided a pathway to an end. And that's what this  
2 plan does, and it does it fairly for this all the reasons  
3 that we've discussed.

4 Your Honor, when you evaluate the issues that have  
5 been raised, for example, about the NBK claim -- and the  
6 claims against NBK. And Your Honor, I thought about raising  
7 my hand and saying it's huge, but it seemed a little too  
8 theatric.

9 But what we know from a factual matter is that the  
10 person who thinks they are the most valuable offered  
11 \$700,000 for them, not even two full business days before  
12 the confirmation hearing was about to begin. And the  
13 trustee told you he evaluated that amount against what's  
14 here for the benefit of creditors and the estate, and  
15 concluded that this was a better deal.

16 Talk about it in 9019 terms, right. It was within  
17 the range of appropriate settlements, although the real  
18 question is ultimately was it in the best interests of the  
19 estate, and the trustee concluded that was true. And if I  
20 heard his testimony correctly, it's because he looked at the  
21 facts that were alleged, and he was told, and he said,  
22 "Ultimately, I find them -- some of them may be okay, but  
23 overall -- not credible. Not really strong claims." Those  
24 are factual claims. You could create a damage model that  
25 could say the claims are worth \$1 billion.

1 But that's not the question. The question is  
2 whether the claims are likely to return something to the  
3 estate. This plan does, and those claims have to be based  
4 on facts. The trustee did his job to confirm whether he  
5 thought there were facts to do that.

6 And, Your Honor, this case needs to come to a  
7 close. And I don't want to be -- you've got our  
8 confirmation brief. You'll see every element of 1129 laid  
9 out clearly there to the extent not addressed here. But  
10 there was this impassioned plea that somehow proof of claim  
11 number seven that only has a deed of trust attached to it  
12 should be given some more weight, and the fact that they  
13 didn't attach a note to it, well, it shouldn't mean all that  
14 much.

15 But just look at the chronology here. That deed  
16 of trust was allegedly executed in 2018. Didn't get  
17 notarized until 2021 and recorded later at a time when, you  
18 know from the evidence before you, the debtor was in  
19 default, and NBK was pursuing its rights.

20 And what you also know simply from looking at the  
21 document was Mr. Choudhri gave a lien to himself. Your  
22 Honor, it would be perfectly appropriate for you to discount  
23 any validity to that claim in addition to everything else  
24 raised by the trustee in his objections in his complaints.

25 Your Honor, there's also no dispute there's no

1 value here beyond the first lien. So anything that anyone  
2 gets under this plan is in effect -- you know, gifting is  
3 out of vogue, right? But it's effectively a gift from the  
4 secured creditor. And the secured creditor's determination  
5 about how it was going to take its value, not the estate's  
6 value, its value -- and spread it out amongst creditors was  
7 to say that trade creditors -- like 260,000 of them --  
8 dollars' worth of them, Your Honor -- who may do work for  
9 the building in the future, they should get the least amount  
10 of hurt.

11 The next group of people who should get the least  
12 amount of hurt but a completely contingent recovery because  
13 it's completely contingent on litigation results should be  
14 those third parties who weren't trade creditors who extended  
15 credit to the debtor.

16 And then finally, you've got the people who caused  
17 this problem who acted inappropriately. Again, I'll go back  
18 to proof of claim number seven. Look at its timing. Look  
19 at the party giving himself a benefit to put himself into  
20 the capital structure on a secured basis for an obligation I  
21 note -- although the document -- I meant are not relying on  
22 the document itself, the settlement statement. But he  
23 described -- Mr. Choudhri described has a credit from the  
24 seller -- not a loan from the seller. A credit. A credit  
25 against the purchase price. Comes back three years later

1 and decides, "I'm going to but a lien on the property," and  
2 you look at the loan documents, Your Honor, and there's no  
3 permitted lien. There's no permitted note. There's no  
4 permitted encumbrance for 2425WL.

5 So when the trustee described it as fake, I think  
6 there is a strong amount of evidence to support that  
7 description. And so the question at the end of the day  
8 becomes because the plan satisfies all the requirements of  
9 1129, should there nonetheless be additional delay to allow  
10 parties to further allow this property to deteriorate -- you  
11 heard evidence about that on Monday -- to further hamstring  
12 a transfer of the property on the hope and the prayer of  
13 claims that the trustee evaluated independently, that the  
14 party is trying to prove up -- at the very least created a  
15 bona fide dispute -- and that you found really basically  
16 lacked no merit -- lack of merit. I'm sorry, Your Honor.  
17 Double negative there. Lack of merit.

18 On those conditions, Your Honor, not like other  
19 judges -- I'm sorry -- similar to how other judges have  
20 ruled in this district from time to time, enough is enough.  
21 It is time to permit this process to end, the plan to be  
22 confirmed.

23 And the last thing I will just underscore, again,  
24 Your Honor. If in fact Mr. Choudhri -- two things, Your  
25 Honor. Go back and look at the confidential settlement

1 agreement. It does not say what Mr. Baker says. It says  
2 (indiscernible) liquidated damages. It is a misreading at  
3 best of that agreement.

4 But here, Your Honor, it is time to bring this  
5 case to an end. It is time for it -- it doesn't violate  
6 (indiscernible). It doesn't extend exculpation provision  
7 protections and non-fiduciaries or (indiscernible) doesn't  
8 even really talk about the gatekeeping function other than  
9 to say in that case, it was a fair implementation tool for  
10 the issue that was before the Court, whether the directors  
11 of the liquidating trust were to get some protection. But  
12 here, it's a fairer limitation of a release of estate claims  
13 and (indiscernible) estate claims.

14 Your Honor, I will just end with two other things.  
15 The first is that notwithstanding some of the  
16 contentiousness that you have seen in the courtroom over the  
17 last few days, I really want to thank in particular Mr.  
18 Burks for his time and his efforts over the last few days to  
19 try to address those things that we could do consensually.

20 And then as he said, and we echo, I can't believe  
21 it's a federal holiday, but we thank you all for your time  
22 and effort here. And obviously I hope it comes to a  
23 particular conclusion, but I also thank you regardless of  
24 the conclusion. Thank you.

25 THE COURT: Thank you.

1 All right. So I'll just make a couple of comments  
2 on the record. First of all, the air conditioning does seem  
3 to be working after all this time at this point in time,  
4 which I'm very happy for.

5 I want to address not really the merits of the  
6 case, but I want to make some comments to Mr. Choudhri. For  
7 whatever reason, he believes that this process has been  
8 unfair, and I would disagree very, very highly; that he may  
9 not like the results, he may not like my determination of  
10 the facts, but I think that he's been given every  
11 opportunity to present his evidence and present his case,  
12 and if he claims due process has not been met in this case,  
13 I disagree with him very, very highly.

14 I also disagree very highly with him that we  
15 haven't done what we need to do to evaluate claims in this  
16 case. The trustee's testimony is compelling as to his  
17 evaluation of the claims. It also lines up with my limited  
18 evaluation of the claims based on what's before me in the  
19 evidence that's before me.

20 A lot of lawyers tell me that their clients have  
21 great claims. When I have lawyers tell me they have great  
22 claims and I don't hear any sort of evidence that tells me  
23 why they have great claims, I start to wonder. All right.

24 I think the process has been fair and open. I  
25 wish Mr. Choudhri the best of luck depending upon what I do.

1 But quite clearly, this is a case that is now over 18 months  
2 old, and I agree that it is a case that needs to come to a  
3 conclusion one way or the other.

4 I am hopeful, Mr. Murray, that I will get some  
5 findings of fact and conclusions of law and an order either  
6 confirming the plan or not to you by the time that you have  
7 your auction. That's the goal. All right.

8 It's just been a really, really bad week. I mean,  
9 I will say that I'm not typically as busy as I've been this  
10 week. I have a huge panel tomorrow that's 61 pages. I  
11 contested confirmation hearings in the afternoon. And I  
12 have a Galveston docket on Friday. So I will work as I can  
13 and as I'm allowed to given what limited time I have, but I  
14 promise you that I'll get something to you that you can look  
15 at, agree with, disagree, and appeal as you feel necessary.

16 All right. Thank you. We're adjourned today.

17 CLERK: All rise.

18 (Whereupon these proceedings were concluded at  
19 4:54 PM)

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C E R T I F I C A T I O N

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I, Sonya Ledanski Hyde, certified that the foregoing transcript is a true and accurate record of the proceedings.

A handwritten signature in black ink that reads "Sonya M. Ledanski Hyde". The signature is written in a cursive, flowing style.

Sonya Ledanski Hyde

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

Date June 25, 2024

## **EXHIBIT B**

**EXHIBIT B*****Summary of Causes of Action Asserted by Mr. Choudhri Against NBK***

	<b>Previously Non-Suited Claims</b>	<b>Pending Action <i>Galleria I Adversary</i></b>	<b>Pending Action <i>Naissance I</i></b>	<b>Pending Action <i>Choudhri Intervention</i></b>	<b>Claims Dismissed in ECF No. 25</b>
<b>Original Case Style</b>	<i>Galleria 2425 Owner, LLC v. NBK and Lee</i> , Cause No. 2021-63370 pending in the District Court of Harris County, Texas, 281st Judicial District	<i>In re Galleria 2425 Owner, LLC</i> ; <i>Galleria 2425, LLC</i> , <i>Naissance Galleria, LLC</i> and <i>Choudhri v. NBK</i> , Case No. 23-06009 pending in the U.S. Bankruptcy Court for the S.D. Tex. Victoria Division	<i>Naissance Galleria, LLC v. Zaheer and NBK</i> , Cause No. 2023-43755 in the District Court of Harris County, Texas, 80th Judicial District	<i>Galleria 2425 Owner, LLC v. NBK</i> , Cause No. 2023-22748 in the District County of Harris Court, 281st Judicial District	<i>Choudhri v. NBK</i> , Cause No. 2024-27168 in the 129th Judicial District Court, Harris County, Texas
<b>Case No./Adversary No.</b>	Cause No. 2021-63370	Adversary No. 23-06009	Cause No. 2023-43755	Adversary No. 23-03263	Adversary 24-03120 (Tax Liens)
<b>Date Filed</b>	6/8/2022	9/19/2023	11/29/2023	12/18/2023	6/7/2024
<b>Date Removed</b>				12/18/2023	
<b>Plaintiffs</b>	Galleria 2425 Owner, LLC	Galleria 2425 Owner, LLC Naissance Galleria, LLC Choudhri	Naissance Galleria, LLC	Galleria 2425 Owner, LLC	Choudhri
<b>Live Pleading</b>	Plaintiff's Second Amended Petition	Galleria 2425 Owner, LLC, Naissance Galleria, LLC and Ali Choudhri's Original Complaint Against NBK	Plaintiff's Second Amended Petition & Emergency Application for TRO	Plaintiff's Sixth Amended Petition	Plaintiff's Third Amended Complaint
<b>ECF No.</b>		ECF No. 1		ECF No. 1 at 917	
<b>Causes of Action</b>	Breach of Contract & Violation of Foreclosure Law (notice of intent to accelerate)  Declaratory Judgment (notice of intent to accelerate)  Breach of Contract (lease approval and sale of property)  Common Law Fraud (induced into entering loan agreements, tenant improvement dollars for Sonder)  Tortious Interference with Prospective Relations and Existing Contracts (Sonder Leases and other leases)  Quiet Title as to George Lee	Breach of CSA  Tortious Interference with Contract (SIBS and Caldwell Soames, Inc.)  Tortious Interference with Business Relations (Posting of Foreclosure Impacted Potential Buyers)  Fraud and Fraudulent Inducement/Lender Liability re: CSA  Fraudulent Conveyance (~\$960k in payments to NBK)	Breach of CSA  Tortious Interference with Contract (SIBS and Caldwell Soames, Inc.)  Tortious Interference with Business Relations (Posting of Foreclosure Impacted Potential Buyers)  Fraud and Fraudulent Inducement re: CSA  Business Disparagement (Posting of Foreclosure Impacted Potential Buyers)	Breach of CSA  Tortious Interference with Contract (SIBS and Caldwell Soames, Inc.)  Tortious Interference with Business Relations (Posting of Foreclosure Impacted Potential Buyers)  Common Law Fraud/Lender Liability re: CSA  Fraudulent Transfer (~\$960k in payments to NBK)  Estoppel (Estopped from claims indebtedness in excess of amount in CSA)	Conversion  Money Had and Received - Unjust Enrichment  Breach of CSA  Requesting declaratory relief

	<b>Previously Non-Suited Claims</b>	<b>Pending Action <i>Galleria I Adversary</i></b>	<b>Pending Action <i>Naissance I</i></b>	<b>Pending Action <i>Choudhri Intervention</i></b>	<b>Claims Dismissed in ECF No. 25</b>
	<p>Promissory Estoppel (Sonder Leases)</p> <p>Breach of Fiduciary Duty/General Good Faith Duty (lease approval and disclosure of confidential financial information)</p> <p>Negligent Misrepresentation (Sonder Leases)</p> <p>Slander of Title (wrongful foreclosure notice)</p>	<p>Estoppel (Estopped from claims indebtedness in excess of amount in CSA)</p> <p>Business Disparagement (Posting of Foreclosure Impacted Potential Buyers)</p> <p>Breach of Good Faith and Fair Dealing re: CSA, not approving leases, potential buyers)</p> <p>Unjust Enrichment (re: NBK's foreclosure on building)</p> <p>Attorneys' Fees</p>	<p>Unjust Enrichment (re: NBK's foreclosure on building)</p> <p>Conspiracy re: Dismissal of Bankruptcy I</p> <p>Attorneys' Fees</p>	<p>Business Disparagement (Posting of Foreclosure Impacted Potential Buyers)</p> <p>Breach of Good Faith and Fair Dealing re: CSA, not approving leases, potential buyers)</p> <p>Unjust Enrichment (re: NBK's foreclosure on building)</p> <p>Conspiracy re: Dismissal of Bankruptcy I</p> <p>Federal Misrepresentation of Services and Unfair Competition Under the Lanham Act</p> <p>Attorneys' Fees</p>	
<b>Defendants</b>	NBK George Lee	NBK	NBK Zaheer	NBK Azeemeh Zaheer	NBK
<b>Status/Disposition</b>	Nonsuit with Prejudice (8/25/2022)	<b>Pending</b>	<b>Pending</b>	Dismissed by Order on Stipulation at ECF No. 26	Dismissed [Case 24-03120, ECF No. 25] Appeal Dismissed [Case 24-03120, ECF No. 34]
<b>Verification</b>	None	None	Choudhri Verification		
<b>Original Case Style</b>	Cause No. 2021-63370, <i>Choudhri v. NBK</i> in the District Court of Harris County, Texas, 281st Judicial District			Cause No. 2023-22748, Choudhri v. NBK in the District Court of Harris County, Texas, 281st Judicial District	
<b>Case No./Adversary No.</b>				23-03263	
<b>Date Filed</b>	7/18/2022			12/4/2023	
<b>Date Removed</b>				12/18/2023	
<b>Intervenor</b>	Choudhri			Choudhri	
<b>Live Pleading/ECF No.</b>	Ali Choudhri's Original Petition in Intervention			Ali Choudhri's Second Amended Petition in Intervention, ECF No. 1-2 at 907	
<b>Causes of Action</b>	Fraudulent Inducement (transferred property to SPE in anticipation of bank loan)			Fraud (Zaheer rep to Cout in Cause No. 2023-41091 that she has authority to act on behalf of Naissance) Promissory Estoppel (vague facts)	

	<b>Previously Non-Suited Claims</b>	<b>Pending Action <i>Galleria I Adversary</i></b>	<b>Pending Action <i>Naissance I</i></b>	<b>Pending Action <i>Choudhri Intervention</i></b>	<b>Claims Dismissed in ECF No. 25</b>
				Equitable Estoppel / Detrimental Reliance (CSA)	
<b>Defendants</b>	NBK			NBK Azeemeh Zaheer	
<b>Status/Disposition</b>	Nonsuit w/o Prejudice (9/6/2022)			<b><i>Pending</i></b>	
<b>Verification</b>	None			Choudhri Verification ECF No. 1-2 at 912	

## **EXHIBIT C**

**Cause No. 2021-63370**

<b>GALLERIA 2425 OWNER, LLC,</b>	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
Vs.	§	OF HARRIS COUNTY, TEXAS
	§	
<b>NATIONAL BANK OF KUWAIT, S.A.K.P.,</b>	§	
<b>A NEW YORK BRANCH and GEORGE M.</b>	§	
<b>LEE,</b>	§	
	§	
Defendants.	§	281 <sup>ST</sup> JUDICIAL DISTRICT

**PLAINTIFF'S SECOND AMENDED PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Plaintiff **Galleria 2425 Owner, LLC** ("Galleria" or "Plaintiff") and files its First Amended Petition against Defendants **National Bank of Kuwait, S.A.K.P., New York Branch, a Banking Corporation Organized Under the Laws of Kuwait, Acting Through its New York Branch** ("Kuwait" or "Defendant") and **George M. Lee** ("Lee") and, in support thereof, respectfully show the Court as follows:

**A. Discovery Control Plan**

1. Plaintiff intends to conduct discovery under Level 3 of Texas Rule of Civil Procedure 190.4.

**B. Claim for Relief**

2. Plaintiff seeks monetary relief over \$1,000,000 and non-monetary relief. Tex. R. Civ. P. 47(c)(4). This case arises out of Kuwait's attempt to wrongfully foreclose on the subject real property owned by Galleria and promises, representations and interference in connection with the subject loan and Galleria's operations and leasing of the property. Galleria hereby asserts causes of action against Kuwait for breach of contract, wrongful foreclosure, declaratory

judgment, fraud, fraud in a real estate transaction, tortious interference, promissory estoppel, breach of fiduciary duty and general duty of good faith, negligent misrepresentation and slander of title. Galleria seeks a temporary injunction and economic, exemplary, and consequential damages, together with attorneys' fees and interest. Galleria further seeks judgment quieting title against Lee.

### **C. Parties**

3. Plaintiff Galleria, at all times relevant hereto, was and is a limited liability company doing business in Texas with an interest in real property located in Harris County, Texas that is the subject of this action.

4. Defendant Kuwait has no registered agent in the state of Texas. This defendant has appeared and answered.

5. Defendant Lee is an individual residing in Harris County who can be served at 5353 West Alabama, Suite 610, Houston, Texas 77056 or wherever he may be found.

### **D. Jurisdiction**

6. The Court has subject-matter jurisdiction over the lawsuit because the amount in controversy exceeds this Court's minimum jurisdictional requirements.

### **E. Venue**

7. Venue is proper in Harris County, Texas pursuant to Texas Civil Practice and Remedies Code §15.001 in that this action affects title to commercial real property and improvements situated entirely within Harris County, Texas located 2425 West Loop South, Houston, Texas 77027 (the "Property"). *See Exhibit "A," Cover Letter and Notice of Sale and Legal Descriptions attached thereto and incorporated herein by reference.*



## F. Facts

8. Defendant's alleged interest in the Property derives from an alleged Note secured by an alleged Deed of Trust, Assignment of Leases and Rents and Profits, Security Agreement and Fixture Filing (the "Deed of Trust") dated on or about May 23, 2018, in favor of Defendant Kuwait. *See Exhibit E, Affidavit.*

9. Stage Stores ("Stage") with approximately 13,000 employees overall and approximately 1,000 employees at its corporate headquarters in the Property was Plaintiff's longtime, primary tenant at the Property leasing hundreds of thousands of square feet over multiple floors. In May, 2020, Stage entered Chapter 11 bankruptcy. Since that time, Stage and its affiliates (Palais Royal, Bealls, Gordman's, etc.) ceased operations, vacated the Property, closed all retail stores in the chain, and laid off all its employees. It goes without saying that the loss of Stage as a tenant impacted the Property, and on account of the ongoing global pandemic, remote work, and market constrictions, it has been difficult for ALL commercial landlords to fill lease space. Plaintiff is actively marketing the Property for lease and showing the Property to prospective tenants. *See Exhibit E, Affidavit.*

10. Stage Stores' demise and quick exit from the Property left Plaintiff with little options until Plaintiff could market and re-lease the Property. Kuwait failed to follow its obligations under Texas law and is, therefore, barred from foreclosing on the Property on October 5, 2021. *See Exhibit E, Affidavit.*

11. Galleria disputes that Kuwait properly served it with Notice of Default and Intent to Accelerate, but to the extent that Kuwait served the June 29, 2021 **alleged** Notice of Default and Intent to Accelerate, it is fatally defective. Therein, Kuwait advised that "[i]f payment of all amounts that are then currently due and owing under the Note are not received by [Kuwait] by

[July 12, 2021], [Kuwait] **intends to** (1) accelerate the maturity of the indebtedness...” *See Exhibit B, Notice of Default and Intent to Accelerate* (emphasis added).

12. Galleria disputes that Kuwait properly served it with Notice of Acceleration, but to the extent Kuwait served the July 14, 2021 Notice of Acceleration, the Notice of Acceleration is ineffective. Any subsequent Notice of Sale is likewise ineffective.

13. Despite Galleria’s requests to Defendant Kuwait to postpone the foreclosure sale, Kuwait refused to postpone the foreclosure, and Kuwait informed Galleria that foreclosure would proceed on October 5, 2021. *See Exhibit E, Affidavit*. Galleria was successful in obtaining a Temporary Restraining Order to stop Kuwait’s foreclosure. Kuwait re-served another Notice of Default and Intent to Accelerate which was defective because Kuwait did not properly serve this Notice of Default and Intent to Accelerate. Kuwait has since served yet another default and intends to foreclose on the Property.

14. Defendant George M. Lee also claims an interest in the Property adverse to Plaintiff and adverse to Kuwait. Lee loaned money to the former owner of the Property, and Lee had a lien on the Property to secure re-payment of loan. Lee received funds sufficient to pay off his loan to the former owner, and Lee released his lien on the Property. Lee, however, repudiated his Release of Lien and now unlawfully claims that his lien continues encumber the Property and that his security interest remains and superior to Kuwait’s alleged lien on the Property. Lee’s alleged lien and/or interest is an unlawful cloud on title.

15. Further, pursuant to the loan documents, Kuwait is obligated to present prospective tenants to Kuwait for approval. Kuwait has no basis to withhold tenant approval, yet Kuwait, at every turn, has thwarted Galleria’s efforts to lease the building and tortiously interfered with Landlord/Tenant relations.

16. After Stage vacated, Galleria has worked diligently to lease the Property. With the COVID-19 pandemic, leasing the Property has been a challenge, and Galleria continues to work to lease the Property. Kuwait originally posted the Property for foreclosure, and the posting was ineffective because of the defective Notice of Intent to Accelerate.

17. During this same time period, Kuwait had already advised Galleria that it wanted its loan paid in full, and in order to pay Kuwait, Galleria was in the middle of refinancing the Property to pay off Kuwait. Galleria was also in the process of leasing the Property to new tenants. The wrongful foreclosure posting caused the new lender to reverse course and stop the refinance process. It also caused the prospective tenant to back out of leasing the Premises. New leases and refinancing the Property fell through as a direct result of the Kuwait's wrongful foreclosure posting.

18. Further, because Kuwait had to approve leases and tenant improvement funds, there are multiple instances where Kuwait failed and refused to approve leases, and there was no basis for these actions. Between the tenants and new lender backing out, and unreasonable failure to approve confirmed leases and failure to approve TI money, among other tortious interference, there is significant lender liability. On account of Kuwait's wrongful posting of the Property for foreclosure, our client has been damaged.

19. Further, the evidence will show that Kuwait tortiously interfered with Galleria's business relations, and it set in motion a domino effect. The evidence will show that due to Kuwait's acts, which the evidence will show were not in good faith, has led to damages of approximately \$80,000,000. Kuwait created the inability to pay them off. They caused to tenants to walk away. If Kuwait had not wrongfully posted the property for foreclosure, Galleria would

have had a tenant that would have leased most of Premises, and the refinancing lender would have paid off Kuwait. Now, regardless of these wrongful, Kuwait wants to foreclose.

**G. Count I Against Kuwait – Breach of Contract & Violation of Texas Foreclosure Law**

20. Plaintiff adopts and incorporates herein by reference the foregoing paragraphs as though fully set forth herein.

21. The applicable contracts in this instance are the alleged Note, Deed of Trust, and Loan Agreement (collectively, the “Loan Documents”). Plaintiff violated one or more of these alleged contracts and Texas law as further specified herein because Kuwait’s alleged Notice of Intent to Accelerate is fatally defective. This defect renders the subsequent alleged Notice of Acceleration and Notice of Sale ineffective. The foreclosure cannot proceed.

22. *Ogden v. Gibraltar Sav. Assoc.*, 640 S.W.2d 232, 233-234 (Tex. 1982) and *Sarasota, Inc. v. Ballew*, 2001 WL 194031, at \* 3 (Tex. App.-Austin 2001, pet. denied) are directly on point and vitiate Defendant’s ability to foreclose.

23. In *Ogden*, the Texas Supreme Court considered whether a notice of intent to accelerate which stated that “failure to cure...*may* result in acceleration” was sufficient to put the plaintiff on notice of the defendant’s intent to accelerate. 640 S.W.2d at 233 (emphasis added). The court held that, because it used the word ‘may,’ the notice was insufficiently clear as to whether acceleration *would* result. *Id.*

24. The Texas court of appeals has since extended *Ogden* to hold that even language indicating that the defendant ‘intends’ to exercise its rights – though somewhat more positive than the notice in *Ogden* that the defendant ‘may’ exercise its rights – is too vague to constitute notice of intent to accelerate. *Sarasota, Inc. v. Ballew*, 2001 WL 194031, at \* 3 (Tex. App.-Austin, pet. denied). In *Mastin v. Mastin*, 70 S.W.3d 148, 155 (Tex. App.-San Antonio 2001, no pet.) the San

Antonio Court of Appeals found that where a party did not give unequivocal notice of intent to accelerate, any attempted acceleration thereafter is ineffective.

25. Kuwait's alleged Notice of Intent to Accelerate is defective on its face because it states that "[i]f payment of all amounts that are then currently due and owing under the Note are not received by Beneficiary by the time and date stated above, Beneficiary **intends to** (1) accelerate the maturity of the indebtedness..." *See Exhibit B (emphasis added)*. On account of Kuwait's fatally defective Notice of Intent to Accelerate, black letter Texas law vitiates Kuwait's ability to foreclose. Kuwait's foreclosure cannot proceed.

26. The alleged Loan Documents and Texas law require Kuwait to serve unequivocal Notice of Intent to Foreclose on Plaintiff. Defendant Kuwait failed to do so which makes any attempt by Kuwait to foreclose unlawful. Defendant Kuwait, therefore, breached the terms of its alleged contracts with Plaintiff and violated Texas foreclosure law.<sup>1</sup> Plaintiff suffered and will continue to suffer damages if the Court does not restrain and enjoin Kuwait.

27. Additionally and/or in the alternative, the subject loan documents are valid and enforceable agreements. Galleria performed its obligations under the loan documents through September 2021, if not later.

---

<sup>1</sup> A borrower's obligation to make monthly payments is independent of a lender's obligations in the event of a default. *Williams v. Wells Fargo, Bank, N.A.*, 884 F.3d 239, 245 (5th Cir. 2018) ("If performance of the terms of a deed of trust governing the parties' rights and obligations in the event of default can always be excused by pointing to the debtor's default under the terms of the note, the notice terms have no meaning.").

Thus, because Plaintiffs' breach of contract claim is related to Defendants' alleged failures to uphold its *post*-default obligations under the Deed of Trust, Plaintiff's default does not preclude its breach of contract claim. *See Adams v. U.S. Bank, N.A.*, No. 3:17-cv-723-B-BN, 2018 WL 2164520, at \* 4 (N.D. Tex. Apr. 18, 2018) (concluding a borrower who is in default is not precluded from asserting a breach of contract claim against a bank when the claim arises out of the bank's alleged failure to provide post-default notice); *Thomas v. Wells Fargo Bank, N.A.*, No. 4:17-CV-2070, 2018 WL 1898455, at \*3 (S.D. Tex. Apr. 20, 2018) ("Plaintiffs' breach of contract claim is not foreclosed as a matter of law by their failure to satisfy their payment obligations under the Deed of Trust.").

28. Kuwait was at all times obligated to perform its obligations under and enforce the loan documents in good faith. Kuwait breached that duty of good faith by withholding approval of leases, timely or otherwise, without reasonable basis.

29. Additionally and/or in the alternative, under Article II of the subject May 23, 2018 Deed of Trust, the declaration of default, pursuit of the remedy of foreclosure and the recording of notices of foreclosure were only authorized in the event of uncured default and after acceleration. Kuwait, through the substitute trustee, materially breached the loan documents by pursuing the remedy of foreclosure, without requisite filings, despite that lack of uncured default and acceleration.

30. Kuwait's wrongful attempt to foreclose constitutes a material breach and/or wrongful repudiation of the loan agreement and/or breach of Kuwait's obligation of good faith.

31. Such wrongful attempt to foreclose proximately caused economic damages and consequential damages to Galleria. Specifically, Galleria has been unable to lease space at the Property or sell the Property on account of the pending foreclosure and real property foreclosure filings. A sale of the Property for \$85 million failed as a consequence of Kuwait's pursuit of wrongful default. Space at the Property could not be leased because tenants do not wish to lease space from a Property under threat of foreclosure. Rents from tenants in excess of \$5 million have been lost as a consequence of the wrongful foreclosure, together with building investment value of over \$100 million, as well as the \$85 million sale of the building.

32. **WHEREFORE**, Plaintiff requests that this Court (i) enjoin the foreclosure sale of Kuwait, its successors and/or assigns and any and all trustees and/or substitute trustees acting by, through, or under them including, without limitation, Josh D. Morton, Laura E. Hannusch, and Adam Weaver, and (ii) enter judgment in favor of Plaintiff and against Defendant for actual

damages in excess of \$1,000,000 and consequential damages in excess of \$100 million, (iii) award Plaintiff's attorney's fees and costs incurred herein, and (iv) award Plaintiff such other and further relief as this Court deems just and proper.

**H. Count II Against Kuwait and Lee - Declaratory Judgment**

33. Plaintiff adopts and incorporates herein by reference all prior paragraphs of this Petition as though fully set forth herein.

34. Additionally and/or in the alternative, Plaintiff seeks a declaratory judgment pursuant to Texas Civil Practice and Remedies Code §37.004 that: (i) Plaintiff's interest in the Property constitutes a legally-protectable interest; (ii) Defendant's alleged Notice of Intent to Foreclose is fatally defective; (iii) the alleged Notice of Acceleration is ineffective; (iv) the alleged Notice of Sale is ineffective; and (v) Lee has no legal or equitable interest in the Property superior to Plaintiff's interest.

35. A real, subsisting, and justiciable controversy exists between the parties hereto concerning the Property and transfer of title.

36. **WHEREFORE**, Plaintiff prays for judgment declaring, decreeing, and adjudging that (i) Kuwait, its successors and assigns and any and all trustees and/or substitute trustees acting by, through, or under them including, without limitation, Josh D. Morton, Laura E. Hannusch, and Adam Weaver, have no right, to foreclose on the Property based on the current posture of the requisite Notices, and (ii) they are barred, enjoined, and estopped from pursuing foreclosure without serving effective, requisite notices.

**I. Count III Against Kuwait – Breach of Contract Against Kuwait**

37. Plaintiff adopts and incorporates herein by reference all prior paragraphs of this Petition as though fully set forth herein.

38. Additionally and/or in the alternative, in order to prevail on its claim for breach of contract, Plaintiff must prove (i) the existence of a valid contract, (ii) performance or tendered performance by Plaintiff, (iii) breach of the contract by Defendant, and (iv) damages sustained as a result of the breach.<sup>2</sup>

39. Kuwait unnecessarily and unreasonably withheld approval of prospective tenants and impeded Plaintiff's efforts to lease the Premises thereby breaching the terms of the mortgage agreements between Kuwait and Plaintiff. Further, Galleria is entitled to reinstate the loan and avoid foreclosure, yet Kuwait refuses reinstatement and demands payment in full. Regardless, Kuwait's loan is nowhere near maturity, and Galleria has an absolute right to reinstate the mortgage and avoid foreclosure.

40. Additionally and/or in the alternative, the subject loan documents are valid and enforceable agreements. Galleria performed its obligations under the loan documents through September 2021, if not later. Paragraph 5.27 provides that Galleria was not to enter into any Material Lease without Kuwait's approval.

41. Kuwait was obligated to perform its obligations under and enforce the loan documents in good faith. Kuwait breached that duty of good faith by withholding approval of leases, timely or otherwise, without reasonable basis. Additionally and/or in the alternative, Kuwait was obligated to exercise reasonable discretion in the approval or disapproval of leases. Kuwait's refusal to approve the leases in a timely manner constitutes a breach of contract dating back to February or March 2019 when Kuwait failed to approve, timely or otherwise, the Sonder leases exercising reasonable discretion.

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<sup>2</sup> *Winchek v. American Express Travel Related Servs. Co.*, 232 S.W.3d 197, 202 (Tex. App.-Houston [1st Dist.] 2007, no pet.) (emphasis added).



42. Kuwait's breach of the duty of good faith in the approval of leases constitutes a material breach and wrongful repudiation of the loan documents. Such breach proximately caused economic damages and consequential damages to Galleria. Specifically, Galleria has been unable to lease space at the Property or sell the Property on account of the described conduct. A sale of the Property for \$85 million failed as a consequence of Kuwait's conduct. Space at the Property could not be leased because of Kuwait's conduct. Rents from tenants in excess of \$5 million have been lost as a consequence of the conduct.

43. **WHEREFORE**, Plaintiff requests this Court enter judgment for Plaintiff and against Defendant for actual damages in such amount as is fair and reasonable, for Plaintiff's attorney's fees and costs incurred herein, and for such other and further relief as this Court deems just and proper.

**J. Count IV – Common Law Fraud Against Kuwait**

44. Plaintiff adopts and incorporates herein by reference all prior paragraphs of this Petition as though fully set forth herein.

45. Additionally and/or in the alternative, Kuwait committed common law fraud because it made material misrepresentations upon which Galleria relied. Kuwait induced Galleria to enter into the loan agreements with no intention of honoring same. Kuwait intended for Galleria to rely on its misrepresentations, and Galleria relied on Kuwait's misrepresentations by entering into the loan agreements.

46. Galleria suffered monetary damages, attorneys' fees and costs, and other sums within the jurisdictional limits of this Court.

47. Additionally and/or in the alternative, between January and March 2019, Galleria advised Kuwait of 2 potential leases of the Property by Sonder USA Inc. ("Sonder"). Kuwait

orally approved the leases and orally promised to provide Galleria funds to cover tenant improvements and brokerage commissions for the leases. Knowing that Galleria could not enter into the Sonder leases without money tenant improvements and commissions, Kuwait followed up the oral promise of funds with conduct confirming the promise.

48. Kuwait's representations were material because Galleria would not have entered into the Sonder leases without those representations of approvals and funding. Kuwait's representations were false statements of fact: Kuwait intended to play semantic games regarding the approval of the leases and was not going to provide the promised funds. Alternatively, Kuwait's representations were false statements of opinion Kuwait knew Galleria would rely on because of Kuwait's knowledge of Galleria's situation. Kuwait's conduct as described above by obtaining appraisals and conduct suggesting approval amounted to false representations to Galleria.

49. To further evidence Kuwait's approval of the lease and promise of funding of commissions and improvements, Kuwait ordered an appraisal of the Property, specifically including the cash flow generated by the Sonder lease.

50. However, Kuwait made those representations knowing they were false – Kuwait had no intent to provide the promised funding and Kuwait later took the position that the Sonder leases were not approved. Or, Kuwait made the representations recklessly, as positive assertions, and without knowledge of their truth.

51. Kuwait intended for Galleria to rely on the representations or had reason to expect Galleria to act in reliance on the representations.

52. Based on such promises, Galleria executed the leases with Sonder in February and March 2019. Upon execution of the leases, Galleria became obligated to pay the real estate brokers advising on the leases their commission.

53. Justifiably relying on the promise of funds and lease approval, Galleria executed the leases and paid the commissions due the brokers.

54. Galleria was forced to seek alternate funding because of Kuwait's refusal to honor its promises. Kuwait's lien position meant that a loan to Galleria would be subordinate, and thus undesirable to lenders generally.

55. Kuwait's notices of default made the subject of this petition cite Galleria's entering into the Sonder leases without permission as events of default. Galleria would not have entered into the leases without Kuwait's representations that the leases were approved.

56. Meanwhile, by March 2020, Sonder decided it did not want to honor the leases and claimed that it was no longer bound by the leases. The Sonder leases represented income to Galleria in excess of \$45,525,000. It is reasonably probable that but for Kuwait's conduct as described in this petition, Galleria would have received rents in excess of \$45,525,000.

57. Galleria's reliance on the promise of funds resulted in Galleria's loss of rents on account of the described funding delays. Galleria's reliance on the described lease approvals and promise of funds resulted in delays that resulted in the loss of rents in excess of \$45,525,000.

58. **WHEREFORE**, Galleria requests this Court enter judgment in favor of Galleria and against Defendants for actual, consequential and punitive damages in an amount within the jurisdiction of this Court, for Galleria's attorney's fees and costs incurred herein, and for such other and further relief as this Court deems just and proper.

**K. Count V – Tortious Interference with Prospective Relations and Existing Contracts**

59. Plaintiff adopts and incorporates herein by reference all prior paragraphs of this Petition as though fully set forth herein.

60. Additionally and/or in the alternative, Kuwait's illegitimate, unreasonable refusal to approve tenants tortiously interfered with Galleria's business relationships. Kuwait's calculated notices of default (and defective notices of intent to accelerate) and wrongful posting for foreclosure disrupted a refinance of the Property that would pay off Kuwait, and Kuwait intentionally frustrated Galleria's efforts to pay off Kuwait through refinancing. Wrongly posting the Property for foreclosure disrupted relations with sophisticated professionals who are aware of these kind of actions by Kuwait. Kuwait simply does not want Galleria to be successful and, in the meantime, wants to foreclose and is making every effort to impede these other contractual relations to prevent Galleria from increasing income and tenancy. Any time prospective tenants, investors, or lenders would appear to be interested, for example, Kuwait's actions caused these groups to lose interest.

61. Tenants do not want to go into a building that is in the foreclosure process. But for the wrongful posting, Galleria would have been able to resolve the matter with Kuwait.

62. Kuwait was aware of and tortiously interfered with the Sonder leases by refusing authority for same, as well as certain others, including but not limited to Resmed Corp., Beyond Finance, LLC, Banca Afirm SA Institucion de Banca Multiple Grupo Financiero and TX Invesco, LP.

63. Kuwait's interference with Galleria's business relationships proximately caused injury to Galleria, including actual damages, loss of prospective tenants, and other business losses and ongoing carrying costs.

**L. Count VI Against Lee – Quiet Title Against George Lee**

64. Plaintiff adopts and incorporate herein by reference all prior paragraphs of this Petition as though fully set forth herein.

65. Additionally and/or in the alternative, quiet title is brought in equity to remove the existence of a cloud on the title. A suit to quiet title is equitable and allows any person claiming any title, estate, or interest in real property to institute an action against any person or persons having or claiming to have any title, estate, or interest in such property to have the court determine the estate, title, or interest of said parties, respectively, in such real estate, and to define and adjudge by its judgment or decree the title, estate and interest of the parties severally in and to such real estate. *See e.g., Vernon v. Perrien*, 390 S.W.3d 47, 61 (Tex. App.—El Paso 2012, pet. denied); *Essex Crane Rental Corp. v. Carter*, 371 S.W.3d 366, 388 (Houston [1st Dist.] 2012, pet. denied); *Longoria v. Lasater*, 292 S.W.3d 156, 165 n.7 (Tex. App.—San Antonio 2009, pet. denied).

66. Lee received all sums due and owing to him, and he released his lien. Nevertheless, he repudiated the Release of Lien and claims the lien remains and that he has an equitable lien and/or interest.

67. Lee possesses no right, title, or interest in and to the Property superior to that of Plaintiff because Lee received funds sufficient to pay off everything he was owed. Same is adverse to Plaintiff's interest in the Property. A justiciable controversy exists concerning title to the Property and the nature and extent of Lee's interest. Plaintiff has no adequate remedy at law.

68. **WHEREFORE**, Plaintiff prays for judgment (i) quieting title to the Property free and clear of any lien alleged held by Lee, (ii) finding that Lee has no interest in or to the Property and (iii) awarding such other and further relief as this Court deems just and necessary.

**M. Count VII Against Kuwait – Promissory Estoppel**

69. Plaintiff adopts and incorporate herein by reference all prior paragraphs of this Petition as though fully set forth herein.

70. Additionally and/or in the alternative, between January and March 2019, Galleria advised Kuwait of 2 potential leases of the Property by Sonder. Kuwait orally approved the leases and orally promised to provide Galleria funds to cover tenant improvements and brokerage commissions for the leases. Knowing that Galleria could not enter into the Sonder leases without money tenant improvements and commissions, Kuwait followed up the oral promise of funds with conduct confirming the promise.

71. Based on such promises, Galleria executed the leases with Sonder in February and March 2019. Upon execution of the leases, Galleria became obligated to pay the real estate brokers advising on the leases their commission.

72. To further evidence Kuwait's approval of the lease and promise of funding of commissions and improvements, Kuwait ordered an appraisal of the Property, specifically including the cash flow generated by the Sonder lease.

73. Relying on the promise of funds and lease approval, Galleria executed the leases and paid the commissions due the brokers. However, instead of providing the promised funding for commissions and tenant improvements in March 2019, Kuwait instead denied that the leases had been ever approved by Kuwait in the first place and refused to provide the promised funds to support the Sonder leases. Such promised funds approximate \$5.5 million.

74. Galleria was forced to seek alternate funding because of Kuwait's refusal to honor its promise to fund the Sonder leases. Kuwait's lien position meant that a loan to Galleria would be subordinate, and thus undesirable to lenders generally.

75. Kuwait's notices of default made the subject of this petition cite Galleria's entering into the Sonder leases without permission as events of default. Galleria would not have entered into the leases without Kuwait's representations that the leases were approved.

76. Meanwhile, by March 2020, Sonder decided it did not want to honor the leases and claimed that it was no longer bound by the leases. The Sonder leases represented income to Galleria in excess of \$45,525,000. It is reasonably probable that but for Kuwait's conduct as described in this petition, Galleria would have received rents in excess of \$45,525,000.

77. Galleria substantially and detrimentally relied on Kuwait's promised approval of the leases when Galleria entered into the Sonder leases and incurred brokerage commissions. Galleria's reliance on the promise of funds resulted in Galleria's loss of rents.

78. Galleria's reliance on Kuwait's promised lease approvals and funds was foreseeable. Galleria requested the funds and approvals, explained why they were necessary and were promised same. Kuwait knew that Galleria could not enter into the Sonder leases without Kuwait's approvals and the promised funds – Galleria made that clear in correspondence that such was necessary to get the lease.

79. Injustice can only be avoided by enforcing Kuwait's promises.

80. **WHEREFORE**, Galleria requests this Court enter judgment in favor of Galleria and against Defendants for actual damages and punitive damages within the jurisdictional limits of this Court, for Galleria's attorney's fees and costs incurred herein, and for such other and further relief as this Court deems just and proper.

**N. Count VIII – Claim for Breach of Fiduciary Duty / General Good Faith Duty**

81. Plaintiff adopts and incorporate herein by reference all prior paragraphs of this Petition as though fully set forth herein.

82. Additionally and/or in the alternative, Kuwait assumed the role of ultimate decision maker with respect to effectively all of Galleria's business operations, including what leases Galleria could or should enter into and the terms and provisions of such leases. Kuwait even commenced granular review of lease provisions for purposes of negotiation of their commercial negotiation. During the course of Galleria's relationship, Kuwait exercised control over Galleria through the purported subject loan agreement, recommended business and ownership structures to Galleria, interjected itself into lease negotiations as described above, and maintained such a close relationship with Galleria, that Galleria was justified in relying on Kuwait to act in Galleria's best interests with respect to the Property and its commercial operation. *O'Shea v. Coronado Transmission Co.*, 656 S.W.2d 5576 (Tex.App. – Corpus Christi 1983, writ ref'd n.r.e.).

83. Kuwait abused this fiduciary or special relationship by obtaining information and taking action that Kuwait and using same against Galleria. Kuwait disclosed Galleria's confidential financial information to third parties to further Kuwait's own business interests, to the detriment of Galleria. Kuwait interfered with Galleria's leasing of the Property as described above.

84. Kuwait abused its relationship with Galleria to induce alleged defaults under the loan agreements with the clear intent to engage in the subject wrongful foreclosure scheme to obtain a building worth over \$100 million for the principal balance under the subject loan, resulting in a windfall to Kuwait and its business partners to the obvious detriment of Galleria, which stands to have all of its equity in the building lost as a result of Kuwait's foreclosure scheme.



85. On account of the loan agreements and assumption of roles and conduct by the Kuwait as consultant, lender and confidant, Kuwait (a) acquired influence and abused that influence as described, (b) took advantage of its relationship with Galleria, (c) knew or had reason to know of Galleria's trust and confidence that Kuwait would maintain the confidentiality of Galleria's confidential financial information, reasonably approve leases, provide promised funds for the Sonder leases, and (d) understood that a special trust, confidence or relationship existed between Kuwait and Galleria. A special dependency was created and existed because of Kuwait's assumption of its role as business consultant, lender and confidant. Kuwait thus assumed the fiduciary or common law good faith duties to Galleria.

86. However, Kuwait breached these duties by withholding promised funds, disclosing Galleria's confidential information to Galleria's competitors in furtherance of Kuwait's business interests, and driving the loan, Galleria and Property into financial jeopardy, alleged defaults and wrongful foreclosure, all as scheme to obtain the Property through the described foreclosure scheme.

87. As the result of Kuwait's breach of its fiduciary or good faith duties, Galleria is entitled to damages in excess of \$100 million, including actual damages, interest, costs, and attorneys' fees.

#### **O. Count VIII – Claim for Negligent Misrepresentation**

88. Plaintiff adopts and incorporate herein by reference all prior paragraphs of this Petition as though fully set forth herein.

89. Additionally and/or in the alternative, between January and March 2019, Kuwait advised Galleria to enter into the Sonder leases and represented that the leases were approved and that Kuwait would provide funds for tenant improvements and brokerage commissions.

90. Kuwait made the representations in the course of its business as Galleria's lender. Kuwait made the representations in the course of a transaction in which it had a pecuniary interest. Kuwait made the representation for the guidance of others.

91. Kuwait's representation was a misstatement of fact or opinion, Kuwait would not provide the promised funds or approve the Sonder leases. Alternatively, Kuwait's misrepresentation was a failure to disclose information when Kuwait had a duty to do so, specifically Kuwait did not intend to release the promised funds and approve the Sonder leases.

92. Kuwait did not use reasonable care in obtaining and communicating the information to Galleria.

93. Galleria actually and justifiably relied on Kuwait's representations when Galleria entered into the Sonder leases and incurred brokerage commissions. Galleria's reliance on the representations resulted in Galleria's loss of rents in excess of \$45,525,000.

94. Kuwait's misrepresentations proximately caused Galleria injury as described above.

95. **WHEREFORE**, Galleria requests this Court enter judgment in favor of Galleria and against Defendants for actual damages in excess of \$45,525,000, for Galleria's attorney's fees and costs incurred herein, and for such other and further relief as this Court deems just and proper.

**P. Count VIII Against Kuwait – Slander of Title**

96. Plaintiff adopts and incorporate herein by reference all prior paragraphs of this Petition as though fully set forth herein.

97. Additionally and/or in the alternative, Galleria possessed the Property and sought to lease the Property at all material times. On September 15, 2021, Kuwait filed its wrongful

notice of foreclosure with the Harris County Clerk seeking the foreclosure of its lien against the Property.

98. In or around the time of the foreclosure notice GalloWorks was ready, willing and able to lease 4 floors of the Property at the rate of \$75,000 per floor per month.

99. Kuwait's foreclosure notice was false or wrongful for the reasons stated herein.

100. Kuwait's foreclosure notice was recorded with the Harris County Clerk with legal malice.

101. As a result of the recording of the foreclosure notice, GalloWorks at the time failed to enter into the lease of the 4 floors as a result of the noticed wrongful foreclosure.

102. Accordingly, Kuwait's wrongful foreclosure notice caused injury to Galleria, which resulted in the loss of rents.

103. **WHEREFORE**, Galleria requests this Court enter judgment in favor of Galleria and against Defendants for actual damages within the jurisdictional limits of this Court, for Galleria's attorney's fees and costs incurred herein, and for such other and further relief as this Court deems just and proper.

**Q. Application for Temporary Restraining Order and Application for Temporary Injunction**

104. Plaintiff adopts and incorporates herein by reference all prior paragraphs of this Petition as though fully set forth herein.

105. By Defendant's unlawful conduct, Plaintiff has suffered and continues to suffer immediate and irreparable harm that cannot be adequately compensated by an award of damages, namely the loss of extremely valuable, unique, Harris County Real Estate. Plaintiff is entitled to injunctive relief to force Kuwait, its successor and/or assigns, and any and all trustees and/or

substitute trustees acting by, through, or under them including, without limitation, Josh D. Morton, Laura E. Hannusch, and Adam Weaver, to refrain from continuing such unlawful conduct.

106. Defendant already confirmed in writing that its unlawful conduct will continue and that Defendant will foreclose on the Property unless this Court immediately enjoins, its successor and/or assigns, and any and all trustees and/or substitute trustees acting by, through, or under them including, without limitation, Josh D. Morton, Laura E. Hannusch, and Adam Weaver, from foreclosing. *See Exhibit D, Email from Kuwait's counsel confirming that foreclosure sale will proceed.*

107. Plaintiff requests a Temporary Restraining Order to maintain the *status quo* pursuant to Texas Civil and Practice Remedies Code Section 65.011. Unless Kuwait, its successor and/or assigns, and any and all trustees and/or substitute trustees acting by, through, or under them including, without limitation, Josh D. Morton, Laura E. Hannusch, and Adam Weaver, are immediately restrained, they will cause substantial and irreparable harm to Plaintiff, namely the potential, irreversible loss of the Property by virtue of a sale to a third party for a sizeable profit. Plaintiff ask the Court to maintain *status quo* and restrain Defendant Kuwait, its successor and/or assigns, and any and all trustees and/or substitute trustees acting by, through, or under them, including, without limitation, Josh D. Morton, Laura E. Hannusch, and Adam Weaver, from foreclosing on the Property until such time as all claims and causes of action in this lawsuit are resolved.

108. Unless Defendant Kuwait, its successor and/or assigns, and any and all trustees and/or substitute trustees acting by, through, or under them including, without limitation, Josh D. Morton, Laura E. Hannusch, and Adam Weaver, are enjoined, they will continue to take advantage of Plaintiff and potentially complete a foreclosure sale of the Property without lawful and proper

notices which will greatly prejudice Plaintiff. Any attempt to take action against Plaintiff or that would prejudice Plaintiff in connection with this unique piece of Harris County real estate will cause Plaintiff to suffer imminent, irreparable harm for which no adequate remedy at law exists if Defendant Kuwait, its successor and/or assigns, and any and all trustees and/or substitute trustees acting by, through, or under them are not enjoined from these actions. The irreparable harm includes, but is not limited to, injury and a complete loss of Plaintiff's business and/or business reputation and/or business goodwill if the valuable real estate Plaintiff owns is lost to foreclosure.

109. Black letter Texas law confirms that Plaintiff's Notice of Intent to Accelerate is fatally defective which renders the subsequent Notice of Acceleration and Notice of Sale ineffective. Furthermore, the Court cannot allow Kuwait to benefit from or foreclose after Kuwait's bad acts that prevented Plaintiff from refinancing and leasing the premises. Plaintiff is likely to succeed on the merits of this suit because Defendant has acted unilaterally, unlawfully, and without the proper authority to take any of these actions.

110. The injunctive relief Plaintiff seeks will do no more than maintain *status quo*. Plaintiff asks the Court to set this application for temporary injunction for a hearing and, after hearing, issue a temporary injunction against Defendant Kuwait, its successor and/or assigns, and any and all trustees and/or substitute trustees acting by, through, or under them including, without limitation, Josh D. Morton, Laura E. Hannusch, and Adam Weaver, restraining Kuwait, its successor and/or assigns, and any and all trustees and/or substitute trustees acting by, through, or under them until a final trial on the merits or arbitration can be heard.

111. Other than equitable relief, Plaintiff has no adequate remedy a law with respect to the actions Plaintiff seeks to enjoin. Without equitable relief, Plaintiffs would suffer irreparable

injuries such as complete loss of its business and loss of reputation and/or business goodwill among tenants and prospective tenants, among others.

112. In support of Plaintiff's Application for Temporary Restraining Order, Plaintiff and Plaintiff's representatives executed Affidavits confirming all facts set forth herein.

#### **R. Attorney's Fees and Costs**

113. Plaintiff adopts and incorporates herein by reference all prior paragraphs of this Petition as though fully set forth herein.

114. Plaintiff had to employ the services of an attorney to prosecute this lawsuit against Defendant. Texas law and the Loan Documents allow Plaintiff to recover attorneys' fees and costs. For these reasons, Plaintiff seeks reimbursement of any and all reasonable and necessary attorneys' fees and costs it incurred in prosecution of this matter.

#### **S. Conditions Precedent**

115. All conditions precedent to Plaintiff's claims for relief have been performed or have occurred.

#### **T. Exemplary Damages**

116. Plaintiff adopts and incorporates herein by reference all prior paragraphs of this Petition as though fully set forth herein.

117. Plaintiff's injury resulted from Kuwait's malice and actual fraud, which entitles Plaintiff to exemplary damages under Texas Civil Practice & Remedies Code section 41.003(a) as has been described above. As such, Plaintiff seeks exemplary damages from Kuwait in an amount within the jurisdictional limits of this court.

**U. Respondeat Superior**

118. At the time of the incident made the basis of this suit, Defendants' agents, servants and employees were in fact their agents, servants and employees, and acting within the scope of their employment and authority as their agents, servants and employees.

**V. Tex. R. Civ. P. 193.7 Notice**

119. This paragraph serves as continuing notice, pursuant to Tex. R. Civ. P. 193.7, that any and all documents produced in response to written discovery served by Plaintiff will be used against the producing party in any pretrial proceedings and/or trial.

**W. Jury Demand**

120. Plaintiff hereby requests a jury trial.

**X. Prayer**

**WHEREFORE, PREMISES CONSIDERED**, as a direct and proximate cause of Defendant's actions and the actions of its successor and/or assigns, and any and all trustees and/or substitute trustees acting by, through, or under them including, without limitation, Josh D. Morton, Laura E. Hannusch, and Adam Weaver, as outlined above, Plaintiff suffered and continues to suffer significant monetary damages including, without limitation, complete loss of the Property. Damages are within the minimum jurisdictional limits of this Court. Plaintiff, therefore, prays that Defendant be cited to appear herein, that upon trial Defendant is held liable for (i) the causes of action Plaintiff pleads and (ii) Plaintiff's damages. Specifically, Plaintiff prays for the following:

- i. Actual economic damages;
- ii. Exemplary damages;
- iii. Declaratory relief as requested herein;
- iv. Quiet title requested herein;

- v. Reasonable and necessary attorneys' fees in an amount to be determined by the Court;
- vi. Costs of Court;
- vii. Temporary and permanent injunctive relief;
- viii. Pre-judgment and post-judgment interest; and
- ix. Any other damages or relief to which Plaintiff is justly entitled.

Respectfully submitted,

**NICHAMOFF LAW PC**

*/s/ Seth A. Nichamoff*

By: \_\_\_\_\_

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Jennifer L MacGeorge  
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SBN: 24093627

**ATTORNEYS FOR PLAINTIFF**

**CERTIFICATE OF SERVICE**

I certify that on Wednesday, June 8, 2022, I served a copy of the foregoing instrument on the parties listed below by electronic service and that the electronic transmission was reported as complete. My e-mail address is seth@nichamofflaw.com.

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Ryan Steinbrunner  
ryan.steinbrunner@pillsburylaw.com  
Two Houston Center  
909 Fannin, Suite 2000  
Houston, Texas 77010-1018

*Attorneys for Defendant*

By: /s/ Seth A. Nichamoff  
Seth A. Nichamoff

**Automated Certificate of eService**

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Seth Nichamoff  
 Bar No. 24027568  
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 Envelope ID: 65268945  
 Status as of 6/9/2022 8:07 AM CST

**Case Contacts**

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## **EXHIBIT D**

Cause No. 2021-63370

GALLERIA 2425 OWNER, LLC,

Plaintiff,

VS.

NATIONAL BANK OF KUWAIT, S.A.K.P.,  
 A NEW YORK BRANCH and GEORGE M.  
 LEE,

Defendants.

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IN THE DISTRICT COURT

OF HARRIS COUNTY, TEXAS

281<sup>ST</sup> JUDICIAL DISTRICT

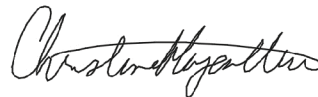
**ORDER ON PLAINTIFF'S NOTICE OF NONSUIT  
AS TO DEFENDANT NATIONAL BANK OF KUWAIT, S.A.K.P.**

The Court has considered Plaintiff Galleria 2425 Owner, LLC's ("Galleria") Notice of Nonsuit With Prejudice as to Defendant National Bank of Kuwait, S.A.K.P. ("NBK") only, and has decided to **GRANT** the Nonsuit in regard to claims asserted by Galleria against NBK.

It is therefore **ORDERED, ADJUDGED, and DECREED** that this dismissal with prejudice of all claims asserted by Galleria against only NBK is **GRANTED**. Each of Galleria and NBK is to bear their own costs and expenses.

This Order does not affect the claims asserted by Galleria against the remaining defendant in this action, George M. Lee.

Signed:  
 8/31/2022




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 Presiding Judge

## **EXHIBIT E**

001050

Galleria 2425 Owner, LLC (Owner”), which is the 100% owner of the building located at 2425 West Loop S., Houston, Texas 77027 (“**2425 Building**”).

3. Azeemeh Zaheer (“**Zaheer**”), is an individual who resides, and has appeared and is represented by counsel Rodney Drinnon, 2000 West Loop South, Suite 1850, Houston, Texas 77027 and David Tang, 6711 Stella Link, #343, West University Place, Texas 77005. **ZAHEER HAS APPEARED.**

4. National Bank of Kuwait, S.A.K.P., New York Branch (“**NBK**”) is a banking corporation organized under the laws of Kuwait, acting through its New York Branch. This party may be served through its counsel, Charles Conrad, Two Houston Center, 909 Fannin, Suite 2000, Houston, Texas 77010-1018, and via email: [charles.conrad@pillsburylaw.com](mailto:charles.conrad@pillsburylaw.com). **CITATION IS REQUESTED.**

### **III.** **INTRODUCTION**

5. Defendant Zaheer was previously the managing member of Naissance Galleria LLC, however on or about July 3, 2020, Defendant Zaheer assigned all control of Naissance Galleria, LLC to Ali Choudhri. On or about July 3, 2020, Defendant Zaheer ceased having any “powers, rights, privileges, duties and discretion” as it pertains to Plaintiff Naissance Galleria LLC. Defendant Zaheer sent an email correspondence to Plaintiff’s current managing member regarding her transfer of interest to Plaintiff’s current managing member, which for all intents and purposes terminated and ratified the interest transfer by Defendant Zaheer for Naissance Galleria LLC.

6. Plaintiff Naissance Galleria LLC has been operating under the control of its current managing member since the execution of the assignment on July 3, 2020 and it is unconscionable to discover that Defendant Zaheer, three (3) years after executing the assignment is now suddenly asserting that she manages and has control over Naissance Galleria LLC. Moreover, Defendant Zaheer retained counsel and initiated litigation against third parties on behalf of Naissance Galleria, LLC three (3) years after executing the assignment. Most shockingly is that fact that, without any appearance or objection by Zaheer, the managing member of Naissance Galleria, Ali Choudhri, who has controlled Naissance Galleria LLC since around July 2020, has initiated lawsuits against Defendant Bank of Kuwait, and has entered into a sealed confidential settlement agreement on behalf of Naissance Galleria, LLC with Defendant Bank of Kuwait which is the subject of another litigation.

7. A lawsuit was originally filed against NBK, a party who has been shown to be willing to engage in bad faith actions amounting to lender liability, because of its repeated attempts to make outside deals with third parties to specifically deprive the JV and Owner of their ownership interest, and Plaintiff of its collateral interest in the 2425 Building, in any way it can.

8. Galleria 2425 Owner, LLC, filed bankruptcy to preserve the asset, which NBK vehemently opposed, and fought to have dismissed from the bankruptcy court. However, at the hearing on NBK's motion to dismiss, Galleria 2425 Owner, LLC was successful in defending against dismissal, and the bankruptcy case moved forward.

9. Galleria 2425 Owner, LLC promptly proposed a plan in the bankruptcy court, which was characterized as a "really smart" plan that "check[ed] all the boxes" for plan confirmation, according to Judge Lopez.



10. Then, after Defendant NBK lost its motion to dismiss, true to its pattern of behavior, it continued to engage in more bad faith actions by conspiring with Azeemeh Zaheer, and perhaps other yet unknown parties, to create confusion that caused havoc and further disrupted the bankruptcy case.

11. Notably, Judge Manor, in this matter, which is referenced in NBK's letter to Judge Lopez, did issue a Temporary Injunction, **which maintained the status quo of Choudhri's management and control of Naissance Galleria, LLC, but limited any actions that could be taken by Choudhri on behalf of Naissance Galleria, LLC to only those which are also approved by Zaheer, until a trial resolves the issue once and for all.**

12. After the Temporary Injunction was in place establishing Choudhri's control of Naissance Galleria, LLC, Counsel David Tang and Rodney Drinnon acting for Azeemeh Zaheer, appeared in violation of this TRO and purported to act for Naissance Galleria, LLC. They appeared on behalf of Naissance Galleria, LLC, at two separate hearings in the bankruptcy court, on or about October 12<sup>th</sup>, 2023 and November 1<sup>st</sup>, 2023. Even more egregiously, these same parties, again acting in express violation of the Temporary Injunction, filed a motion to lift the stay in the bankruptcy court, which is entirely against the fiduciary interests of plaintiff, and they request for Judge Lopez to rule against the this Court and find that Zaheer had control of, and could act for Naissance Galleria, LLC.

13. When the parties to the state court litigation returned to appear before this Court on November 13<sup>th</sup>, 2023, Judge Manor confirmed that her Temporary Injunction did not give Zaheer any right to act as the manager of Naissance Galleria, LLC, and confirmed that Choudhri was in control, subject to Zaheer's approval during the pendency of trial.

14. All of these actions, including the actions taken by Zaheer in direct violation of this Court's temporary injunction, gave rise to Judge Lopez's serious concerns about the ability to move forward with the bankruptcy case without resolution in the state court action. Judge Lopez stated in the November 1<sup>st</sup>, 2023 Status Conference the following:

"I don't have anything to qualify it in state court issues. I don't know. There's just a lot of confusing stuff, and my gut tells me that I need to dismiss this case and let you all go figure this out in State Court, because there's not enough here, and there's real concerns that I have...".

15. The fact that Zaheer, allegedly acting on behalf of Naissance filed these appearances and motions in violation of the Temporary Injunction not only makes these actions unlawful, but there could be no other purpose aside from attempting to cause the dismissal of the bankruptcy case brought by Galleria 2425 Owner, LLC, which is an action that, logically, would be counter to the company's fiduciary interests.

16. In its letter, NBK cleverly attempts to confuse the court by implying that Ms. Zaheer had control of Naissance Galleria, LLC because the order says that management decisions could not be made without her approval. This is exact same argument Zaheer made before being shut down by this Court itself, stating that its Temporary Injunction left Mr. Choudhri in control, subject to Zaheer's approval, in order to freeze all actions of the parties until trial, except that Mr. Choudhri's actions on behalf of Naissance Galleria, LLC in the instant suit have been expressly permitted.

17. Judge Weems in the 281<sup>st</sup> Civil District Court has handled cases related Galleria 2425 Owner, LLC for years, and is well aware that Ms. Zaheer has been entirely absent from any of these proceedings until on or about July 5<sup>th</sup>, 2023, when Mr. Tang appeared, allegedly for

Naissance Galleria, LLC, before that Court's ancillary docket, attempting to stop the foreclosure by NBK, at which hearing Judge Weems questioned the absence of Ms. Zaheer over the last several years, and denied the TRO, as it was not believable to Judge Weems that Zaheer had authority to act on behalf of Naissance Galleria, LLC.

18. From July 3<sup>rd</sup>, 2020, the date of signing, until or July 5<sup>th</sup>, 2023, Defendant Zaheer did not make any claims of control over Naissance Galleria, LLC, did not attempt to object to or interfere with Mr. Choudhri's management of the company, and did not make allegations of forgery regarding the assignment of the company to Choudhri. These allegations are absurd, as Defendant Zaheer has been entirely absent from the company's management for years.

19. **As a result of this conspiracy by the Defendant Bank of Kuwait and Defendant Zaheer falsely acting on behalf of Plaintiff Naissance Galleria LLC the emergency status conference requested by NBK resulted in the dismissal of the bankruptcy case.**

20. **What's interesting is that, if Ms. Zaheer was authentically the manager of Naissance Galleria, LLC, and acting in the best interests of the company, she would not have worked tirelessly to have the bankruptcy case dismissed. The mezzanine debt, held by Naissance Galleria, LLC is junior to, or behind the NBK debt, the second lien debt, and the tax liens on the 2425 Building, and thus will be entirely wiped out if NBK forecloses on the 2425 Building, given its present valuation. In addition, the agreement between the JV and Naissance Galleria, LLC is to treat equity and the mezzanine the same, and split the proceeds 50/50, so if the building is foreclosed, all of these parties walk away with nothing.**

21. Such actions, if they had been taken by a legitimate manager for Naissance Galleria, LLC, would be a breach of fiduciary duty to the company, unless there was a back room deal between Defendant Zaheer and Defendant Bank of Kuwait that provides Naissance Galleria, LLC

with more compensation than it would have been provided under the proposed bankruptcy plan. Otherwise, dismissal of the bankruptcy leaves Naissance Galleria, LLC with zero repayment on its mezzanine debt, where it would have received more than that through the proposed plan.

22. Now that NBK has re-posted the 2425 Building for foreclosure, Plaintiff will suffer irreparable harm as a result of the defendants' actions.

#### IV. **FACTUAL BACKGROUND**

23. In 2018, Defendant NBK loaned certain funds to Galleria Owner 2425, LLC and at the same time NBK has continually interfered with the Plaintiff's ability to lease the 2425 Building to produce revenue and Plaintiff's ability to sell the 2425 Building to pay NBK off. Every time NBK has so interfered, it has then blamed the Plaintiff for its inability supposedly to meet some of the loan terms. What is now occurring is simply a continuation of the long term interference, because Defendant National Bank of Kuwait simply wants to own the building instead of being paid off.

24. For example, in January 2021, Plaintiff Ali Choudhri, who is vilified by NBK in various pleadings, had the building at 2425 West Loop South, Houston, Texas, the main asset of the Plaintiff, had serious parties interested in building for a purchase price of \$85 million, more than enough to clear NBK's debt. A letter dated January 15, 2021 from SIBS International and two purchase contracts which would have paid off not only NBK, but left the Plaintiff with a great deal of value. **NBK, rather than facilitate this sale, disclosed confidential information and sales issued a formal notice of default**, while the SIBS International deal was in progress, killing that deal.

25. **The same was true with regard to NBK's interference with efforts to lease space in the building to provide revenue so it could operate and make loan payments.** By August 2021, this situation had become untenable due to NBK's refusal to approve new tenants and new leases, prompting the Plaintiff on August 13, 2021 to send NBK a detailed letter regarding lease-up and renewal prospects for discussions, none of which, it seemed NBK would approve.

♦ **Healthcare Service Organization**

- •Size: 130,000+ RSF – large client requirement in their preliminary planning stages: •Industry: Healthcare Service Organization •Type of use: Administration Offices •Direct/Sublease •Commencement date: Q3/2023 •Term:5-10 yrs. They are specifically VERY interested in amenities available, for example: deli, gym, day care, conference center (# of seats), training center (# of seats).

♦ **Invesco**

- We met with the team twice and are actively pursuing them for 2425. They are interested in a 157-month lease term for 208,830 SF of Net Rental Area.

♦ **Financial Services Firm**

- Office •AREA: West Houston (610 West, Hwy 290, Beltway 8) •SPACE: Open Concept •SIZE: Approximately 20,000 – 25,000 rsf •PARKING: 5/1000 ratio •OCCUPANCY: Late 2Q22/Early3Q22 •TERM: 36-60 months with renewal options •This tenant is currently at 24 Greenway on their top floor and have been looking at other A buildings.

♦ **Beyond Finance**

- We are discussing a 68-month lease term for +/- 40,000 rentable SF.

♦ **Banco Affirme**

- We submitted a 64-month lease term for 4,545 SF of Net Rental Area.

♦ **Wells Bank (existing tenant)**

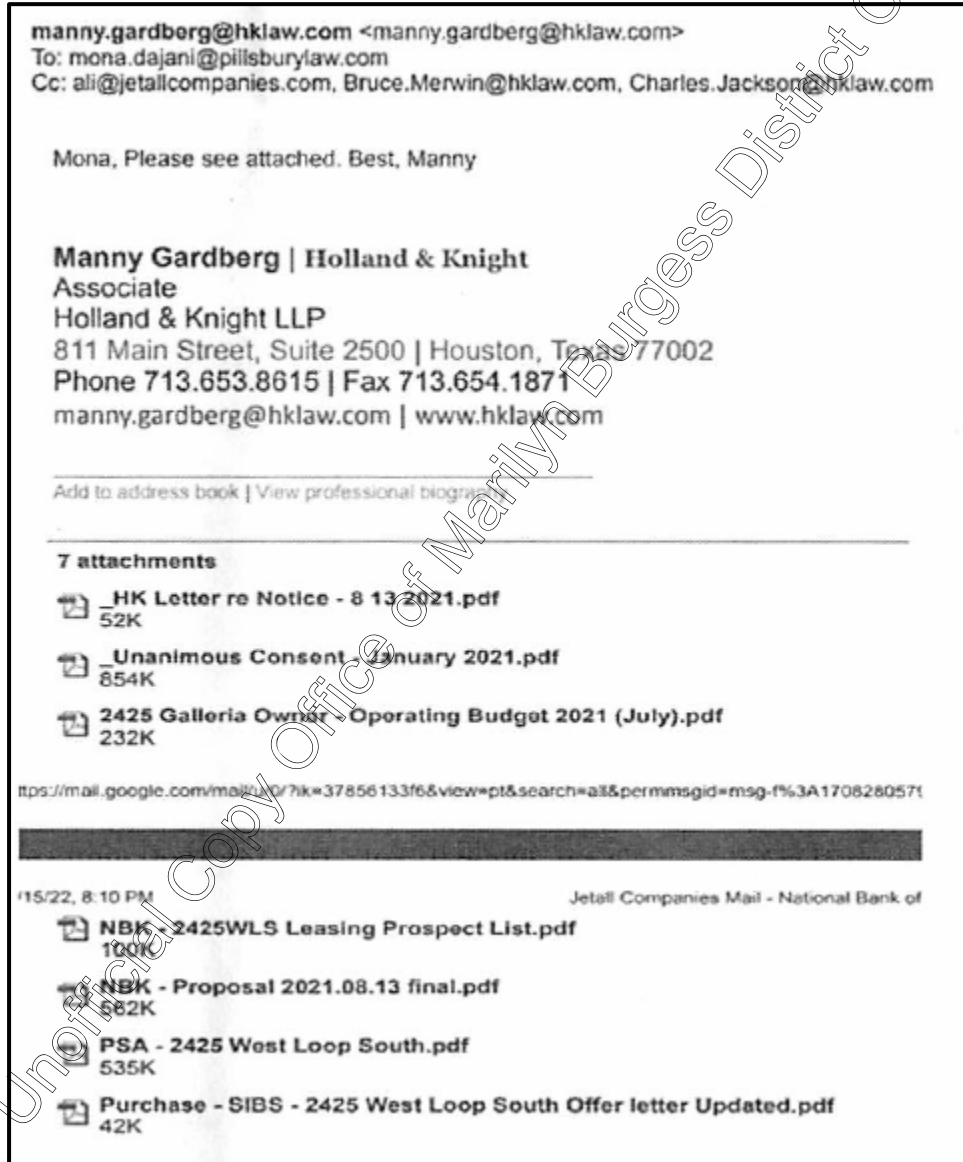
- Renew 3,054 SF of rental space for 60-month term starting January 1, 2022.

♦ **Others (working directly with ownership)**

- ResMed (<https://www.resmed.com/en-us/>), interested in the entire building, working directly with Dr. Peter Farrell, Founder and Chairman

- Healthstore Holdings (<https://www.healthstore.com/>), interested in a 15-year term with 80,000 SF in phase 1 and 75,000 SF in 12 months as phase 2.
- Immunicom (<https://immunicom.com/>), interested in at least two full floors, moving HQ from San Diego, CA

26. Below is an August 16, 2021 email from counsel for the Plaintiff to NBK forwarding multiple leases for approval that **NBK had failed to approve or even respond to.**



This lack of approval, or finding obstacles to approve, was not new. In September 2019, Related Group had reached out to lease the parking garage located at the 2425 Building to be used for

overflow, for parking up to 110 spaces. **NBK's authorized representative Michael Carter would not approve this lease** (note "nbkny" email address below— *i.e.* National Bank of Kuwait, New York Branch), which would have generated a great deal of revenue for the Plaintiff.

**From:** Michael Carter <Michael.Carter@nbkny.com>

**Date:** Monday, 23 September 2019 at 13:22

**To:** Azeemeh Zaheer <azeemeh@naissancecapital.co.uk>, Lisa Walker <Lisa.Walker@nbkny.com>

**Subject:** RE: LOI

My primary concern is that the tenant determines when the commencement date is, presumably because they have zoning and building department approvals to complete as well as financing to arrange, which is understandable, however there does not appear to be an outside expiration date for the Commencement date. It appears they could tie up the space permanently without having to pay rent. I think you should have an outside date for commencement.

27. The situation became so untenable that in September 2021, Galleria 2425 Owner, LLC initiated a lawsuit against NBK.

28. In good faith, even during the pendency of this litigation, the Galleria 2425 Owner, LLC was still trying to get tenants into the building and get NBK's approval to do so, so it would not claim additional breaches of loan agreements. **On July 2, 2022, Galleria 2425 Owner, LLC sent NBK five leases for approval, which NBK did not approve.**

29. *Defendant Bank of Kuwait and Galleria Owner 2425 LLC litigated for eleven (11) months until August 22, 2022, when they entered into a Confidential Settlement Agreement. The entire Confidential Settlement Agreement will be submitted to the Court in camera at the appropriate time, and the Plaintiff – Naissance Galleria should be allowed to use it in this case since the breach of that Settlement Agreement by NBK is not only actionable, but was also devastating to Plaintiff. Because NBK has a way of interpreting any action of the Plaintiff as one*



to breach or avoid some purported contractual obligation or other, when the reverse is entirely true, the Confidential Settlement Agreement has not been attached. **NBK has prevented Galleria 2425 Owner, LLC's successful performance under any and all agreements it has with NBK, including the Confidential Settlement Agreement.**

30. The Confidential Settlement Agreement permitted a timeframe in which **Galleria 2425 Owner, LLC** could sell the 2425 Building, and **Galleria 2425 Owner, LLC** was successful in receiving a hard Letter of Intent dated January 17, 2023 to purchase the building from Caldwell Soames. Again, while these negotiations were ongoing, **NBK took actions which interfered with the continuation and closing of that transaction, including issuing a notice of foreclosure on March 29, 2023 in breach of the Confidential Settlement Agreement, which Galleria 2425 Owner, LLC believes was done intentionally to prevent the sale.** The sale would have cleared the Bank of Kuwait debt as it stood at that time and left great value for **Galleria 2425 Owner, LLC and** Plaintiff. Plaintiff believes that Bank of Kuwait recognized that greater value and wanted to take it for itself by foreclosure in a “loan to own” gambit.

31. There are tremendous factual inaccuracies that NBK represents to state and federal courts and they continue into these proceedings. For example, in its Motion to Dismiss the Plaintiff's Bankruptcy, while it is absolutely true that temporary restraining orders were filed to attempt to prevent a foreclosure by NBK and its takeover of the 2425 Building, they were also **granted by this Court.** The **facts presented that NBK had not allowed the Galleria 2425 Owner, LLC to lease up the building to generate revenue, and had killed two transactions that Galleria 2425 Owner, LLC was working on that would have cleared NBK and left value for the Galleria 2425 Owner, LLC.**



32. Additionally, NBK posted for foreclosure in 2023 early, and against an extended grace period that this Court had given Galleria 2425 Owner, LLC, which silenced the bidding process and interest in the 2425 Building completely. No one wants to buy a building posted for foreclosure. **Plaintiff believes that NBK knew this and did it on purpose to prevent the Galleria 2425 Owner, LLC from successfully selling the property and paying off the loan, so NBK could foreclose and become the owner of the 2425 Building.**

33. The absolute opposite is true. Representatives of Defendant NBK have admitted in writing that the following substantial payments have been made to Defendant NBK well after March 6, 2021:

- a) \$801,509.42 paid by Galleria 2425 Owner, LLC to Defendant NBK on August 27, 2022;
- b) \$80,000 paid by Galleria 2425 Owner, LLC to Defendant NBK on April 18, 2023;
- c) \$80,000 paid by Galleria 2425 Owner, LLC to Defendant NBK on May 10, 2023.

This is almost One Million Dollars (\$1,000,000) that not only does NBK not give credit to Galleria 2425 Owner, LLC for having made the payments, but again, it vilifies it, saying exactly the opposite that no payments (zero) have been made since March 6, 2021.

34. After NBK's disclosures of the situation created by the Confidential Settlement and the wrongful posting for foreclosure during an extension of that agreement, potential buyers of the property who would otherwise become good prospects to negotiate a sale with **Galleria 2425 Owner, LLC**, became potential purchasers of the NBK Note and began negotiating with NBK. NBK interfered with these potential purchases and with these business relationships. At least the following were interfered with in this fashion:

- a) Globix Investment,
- b) Ironwood Commercial Realty,
- c) Shah Firm, LLC, and
- d) Jeb Brown Law.

**B. Azeemeh Zaheer Decides She Wants the Building.**

35. On June 26, 2023, Defendant Zaheer filed a lawsuit in the name of Naissance Galleria, LLC (“*Naissance*”), which she purported to control, in the 157<sup>th</sup> Judicial District Court in Harris County, Texas referenced by case number 2023-39006 against Brad Parker (“*Parker*”) as an initial step in Zaheer pursuit of a hostile takeover of the 2425 Building.

36. On July 5, 2023, Defendant Zaheer and also in the name of Naissance, filed a second lawsuit in the 129<sup>th</sup> Judicial District Court in Harris County, Texas referenced by case number 2023-41091 against Parker and NBK at the request of Zaheer, to further the defendants’ hostile takeover attempt of the 2425 Building. Zaheer sought injunctive relief, but that request for an emergency temporary restraining order was denied.

37. On or about July 5, 2023, Galleria 2425 Owner, LLC commenced a Chapter 11 bankruptcy proceeding in the Southern District of Texas, referenced by case number 23-60036. NBK sought to dismiss the bankruptcy proceeding, but its motion to dismiss was denied on September 26, 2023. The Chapter 11 Plan should have been approved and would have substantially reduced the value of Bank of Kuwait’s secured debt, which Bank of Kuwait decided it would not allow, just as it had decided not to allow the prior sales of the building that had been lined up by Galleria 2425 Owner, LLC.

**C. Azeemeh Zaheer is a False Representative of Naissance.**

38. Azeemeh Zaheer at one time had a business relationship with Ali Choudhri, both of which appeared to have ended mutually for a time. Azeemeh Zaheer filed an Application for Temporary Injunction in the 80th Judicial District Court for Harris County against Naissance Galleria, LLC, which was a mezzanine lender to an LLC (“**LLC**”) two steps up in the building’s ownership chain.

39. Azeemeh Zaheer had signed, as the authorized representative of the Managing Member of Naissance Galleria, LLC an Assignment of the management rights of that LLC to Ali Choudhri. In response, Mr. Choudhri stepped into Naissance’s shoes, covered its expenses, and did a miraculous job of negotiating the aforementioned settlement with Bank of Kuwait after the Assignment. Azeemeh Zaheer made this assignment for a number of reasons, but most of them stemmed from her ineffective management of the building and her fear of exposure to Bank of Kuwait and certain individuals affiliated with the Bank of Kuwait because of her poor performance.

40. After Mr. Choudhri received the Assignment and had negotiated the successful settlement with Bank of Kuwait and the building looked as if it might succeed (a period of years), Azeemeh Zaheer decided she wanted to misappropriate the value that Mr. Choudhri had just preserved and to an extent had just created. First, she claimed the Assignment was invalid and sought and received a Temporary Injunction on September 21, 2023 from the 80th Judicial District Court in Harris County. This Temporary Injunction basically only created a stalemate with respect to the management of Naissance Galleria, LLC to preserve the status quo until a trial in January. Mr. Choudhri is still the manager of Naissance Galleria, LLC, not Azeemeh Zaheer, although she did have some approval rights under the injunction. Mr. Choudhri, as the manager of Naissance

Galleria LLC, is only required to obtain approval from Zaheer for his actions. Zaheer DOES NOT have any control of the entity. Moreover, this was confirmed at a hearing on November 13, 2023 before Judge Manor in the 80<sup>th</sup> Judicial District Court.

**D. Azeemeh Decides to Conspire with Bank of Kuwait So It Could Foreclose On the Building.**

41. After the September 21, 2023 entry of the Temporary Injunction, some ironic, if not strange, events start taking place with respect to Ms. Zaheer and the Galleria 2425 Owner, LLC. First, it is against Azeemeh Zaheer and Naissance's financial interests if the Bank of Kuwait forecloses.

42. Second, on information and belief, Zaheer caused a copy of the Temporary Injunction Entered on September 21, 2023 by the 80<sup>th</sup> Judicial District Court in Harris County to be sent to counsel for the Bank of Kuwait, who in turn immediately wrote a letter to Judge Lopez, the Bankruptcy Judge in charge of Galleria 2425 Owner, LLC's Bankruptcy, and the Judge who has approval authority over Galleria 2425 Owner, LLC's Plan. (Not exactly helpful in getting a Plan of Reorganization approved.)

43. Third, Zaheer's attorneys (Mr. Tang and Mr. Drinnon) show up without any forewarning at the October 12, 2023 status conference in the Bankruptcy Court about the plan, claiming Azeemeh Zaheer now is the manager of Naissance Galleria, LLC and they have been hired by her to represent Naissance Galleria, LLC, all by virtue of the Temporary Injunction.

44. They again made pleas to the court regarding Zaheer's desire to take over the 2425 Building, stating the Temporary Injunction gave them sole authority to represent Naissance, and Naissance did not want to sue the Bank of Kuwait for breach of the Settlement Agreement as it had already done under Mr. Choudhri's rightful management.

**E. Zaheer Changes Sides to Make a Deal with the Bank of Kuwait and Extort Money from Mr. Choudhri.**

45. Progressively, Azeemeh Zaheer's behavior becomes more inexplicable as she instructs her attorneys to: (1) take the position that the Temporary Injunction put her in charge of Naissance (it did not);<sup>1</sup> (2) that Naissance Galleria, LLC could or had already become the owner of Galleria 2425 Owner, LLC) and as the new owner, they might want to take the bankruptcy in another direction.

46. **The only explanation for Zaheer's extraordinary behavior, which appears self-destructive, is Zaheer sees the opportunity to make a deal with the Bank of Kuwait or extort Mr. Choudhri, who will lose millions of dollars of equity in the building if a foreclosure takes place.**

47. This created an environment of confusion for the Bankruptcy Court, which was by Defendants' design, and it was a concerted effort by the Defendants to have the bankruptcy case dismissed, allowing the Bank of Kuwait to foreclose. Defendant NBK would not be impeded by the bankruptcy and Zaheer could tell Mr. Choudhri, "I will not go along with your reorganization plan unless you pay me millions of dollars" while making a deal with the Bank of Kuwait to block the Plan of Reorganization in the event no payment was received from Mr. Choudhri.

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<sup>1</sup> At a hearing had in the issuing court (the 80th Judicial District Court) on Monday, November 13, 2023, the Court confirmed her Temporary Injunction Order had not turned control of Naissance over to Zaheer and Zaheer had no authority to authorize attorneys to make the filing and take the action they had on behalf of Naissance Galleria, LLC in the Bankruptcy.

48. The Defendants are working in concert, to achieve the same end. Specifically, the Defendants have devised, and intended to devise, a scheme or artifice to seize the 2425 Building by any means necessary. Defendants will stop at nothing to see the Plaintiff lose any interest it has in the 2425 Building

49. Defendants' scheme has involved false representations of material information, including but not limited to misrepresentations concerning the Plaintiff and the purpose and effects of the Temporary Injunction.

**F. False Representations by Zaheer's Agents are Successful in Getting Galleria 2425 Owner LLC's Bankruptcy Dismissed.**

50. The Bankruptcy Court scheduled a Status Conference for Galleria 2425 Owner, LLC's Bankruptcy Case for November 1, 2023. Azeemeh's agents, on October 31, 2023, only hours before the Status Conference, filed an Emergency Motion. This Motion contained many misrepresentations, some of which follow:

- a) Even though Zaheer had no right to or standing necessary to file anything on behalf of Naissance, and the Temporary Injunction gave Zaheer no such rights, statements were made in their Emergency Motion directly to the contrary, stating Azeemeh Zaheer was in, Choudhri was out.
- b) The filing stated flatly at one point that the Assignment had been found to be forged— it had not.
- c) The filing stated that, because of the Temporary Injunction, Naissance was now controlled exclusively by Zaheer, who could make Naissance become the Owner of the Bankrupt. (The issuing court on Monday, November 13, 2023, ruled from the bench it said no such thing.)

These misrepresentations had the desired effect, and the Bankruptcy Court dismissed the Bankruptcy, green-lighting the Bank of Kuwait to foreclose.

**G. Abdullatif is Choudhri's Competitor and Wants to Ruin Him.**

51. Choudhri has been in the real estate investment and management business for the last 20 years. The regular course of Choudhri's business involves numerous aspects of real estate development. These activities include real estate and business acquisitions and dispositions, seeking and obtaining financing, and developing and managing commercial and residential properties. He regularly raises capital for these activities through the issuance of equity and/or debt. It is also within his normal course of business to enter into transactions with borrowers, lenders, and investors to support the purchase, development, and operations of real estate properties.

52. Choudhri at times conducts his real estate investment and management business through the use of special purpose entities, such as Plaintiff Galleria Owner 2425, LLC. Choudhri runs a management company, Jetall Companies, Inc. ("**Jetall**"), to provide employees and management services to entities for purposes of operating real estate investments.

53. Abdullatif has provided financing for numerous third-party claims against Choudhri, including interfering with Choudhri's final divorce proceedings in both Pakistan Supreme Court and Harris County District Court by soliciting Choudhri's ex-wife for her legal claims against Choudhri and/or his entities and to gain access to Choudhri's protected financial disclosures.

54. Upon information and belief, Abdullatif is also financing the litigation expenses of Zaheer against Choudhri in the dispute over the building owned by Plaintiff. Zaheer has agreed to the enterprise course of action aimed at destroying Choudhri's business, and either taking possession of the 2425 Building or extorting money from him to agree to a plan of reorganization.

55. On more than one occasion, Abdullatif resorted to violence and threats against Choudhri and/or his family, friends, and associates. Mr. Choudhri had another real estate venture involving an entity called Dalio. Abdullatif was present at Dalio's foreclosure proceeding, where a friend accompanying him assaulted one of Choudhri's lawyers. On another occasion, Abdullatif and his associates used firearms to hold Choudhri and his associates hostage.

56. Abdullatif also formed an association with others in his illegal efforts to destroy Choudhri's business. These individuals include but are not limited to Chris Wyatt, former Chief Operating Officer of Jetall ("**Wyatt**").

57. Wyatt was hired by Jetall in 2019. In the course of his employment, Wyatt oversaw legal and litigation matters for Jetall. He was provided confidential information concerning Jetall's and its client's real estate transactions, finances and debt leverage on properties, and litigation management strategies. As a Jetall representative, Wyatt was regularly involved in and provided access to privileged information and communications, including information subject to attorney-client and work product privileges. Wyatt signed a non-disclosure agreement at the beginning of his employment prohibiting him from disclosing confidential information and requiring him to return all files upon his termination.

58. Wyatt's employment at Jetall ended in December 2020. When he left Jetall, Wyatt stole corporate files including electronic communications and secretly recorded privileged phone communications between Choudhri and his attorneys.

59. Jetall obtained a restraining order in January 2021 enjoining Wyatt from disclosing or divulging confidential information obtained through his course of employment with Jetall.

60. Abdullatif met with Wyatt immediately following Wyatt's departure from Jetall. Abdullatif, directly and through his lawyers, received confidential and privileged information from



Wyatt. This information included but is not limited to illegal recordings of Choudhri's conversations with attorneys.

61. Upon information and belief, Abdullatif and his agents were aware that Wyatt was a former employee of Jetall who was involved in confidential and privileged communications and that a restraining order was entered enjoining Wyatt from disclosing confidential information.

62. Abdullatif and his agents have used the illegally obtained information and recordings as part of Abdullatif's scheme to destroy Choudhri's business. Abdullatif retained Wayne Dolcefino ("**Dolcefino**") as a "consultant" to publish on the internet a series of hit pieces on Choudhri. Dolcefino advertises that his services included "litigation support," and Abdullatif has utilized Dolcefino in the course of his numerous lawsuits asserted against Choudhri and his businesses.

63. Information illegally obtained from Wyatt is included in many of Dolcefino's hit pieces. Dolcefino continues to publish these hit pieces on the internet, including videos posted in May 2023.

64. Abdullatif, with the assistance of Drinnon, now representing Azeemeh Zaheer, has made several false claims against his competitor, Choudhri, in many ways, two of the most egregious being:

- a) Hiring Dolcefino to create video "hit pieces" about Choudhri, his business, his marital status, and inappropriate character based upon his actions during that marital status. This video contained "over the top" falsehoods, e.g. that he was still married and had been for years. It was commercial speech designed to designate a competitor (Choudhri) and give Abdullatif a competitive advantage, and was introduced into interstate commerce by release to major television (broadcast and cable) networks and by placing on the internet where it still resides today, making it available to the potential customers and lenders that are competed for; and

- b) Placing multiple improper Lis Pendens on the record title to properties owned by Choudhri or his business entities, which created a double negative effect on Choudhri's ability to conduct business by hampering his ability to find new lenders or renewing existing loans because the security for them was impaired and making it impossible to sell those properties to raise new capital on his own. These Lis Pendens were "over the top" misrepresentations because they were illegal and did not assert valid interests in the subject properties. The Lis Pendens were also introduced into interstate commerce because they were filed of record and were available "online" over the internet to any potential customer for commercial real estate in the Houston area.

**V.**  
**CAUSES OF ACTION**

**COUNT 1: BREACHES OF CONFIDENTIAL SETTLEMENT AGREEMENT**

65. Plaintiff repeats and realleges the allegations set forth in all preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

66. Plaintiff and Defendant reached a valid and enforceable agreement expressly set forth in the Confidential Settlement Agreement. Pursuant to the Confidential Settlement Agreement, Defendant agreed to keep the contents and terms of the parties' agreement completely confidential.

67. Defendant breached the Confidential Settlement Agreement by disclosing its contents and terms to third parties in violation of the agreement's express confidentiality provisions. These disclosures prevented the sale of the 2425 Building and chilled the market for other buyers.. The same is true for NBK's wrongful, early filing of a notice of foreclosure on the 2425 Building, also in violation of the Confidential Settlement Agreement.

68. Plaintiff hereby sues NBK for these breaches of the Confidential Settlement Agreement. The damages for these breaches are the amounts of money that the Plaintiff would have made from the contemplated transaction

**COUNT 2: TORTIOUS INTERFERENCE WITH CONTRACT**

69. Plaintiff repeats and realleges the allegations set forth in all preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

70. As alleged, NBK tortiously interfered with the SIBS International contract and the Caldwell Soames Inc. contract, causing damages to the Plaintiff, but for NBK's interference, would have been paid to the Plaintiff.

71. Zaheer, tortiously interfered with Plaintiff's contract with NBK, and with Plaintiff's bankruptcy proceeding.

**COUNT 3: TORTIOUS INTERFERENCE WITH BUSINESS RELATIONS**

72. Plaintiff repeats and realleges the allegations set forth in all preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

73. After NBK's disclosures of the situation created by the confidential settlement and the wrongful posting for foreclosure during a judicial extension of the grace period contained in that agreement, potential buyers of the property who would otherwise have become good prospects to negotiate a sale with Galleria 2425 Owner, LLC became instead potential purchasers from NBK of the NBK note and began contacting and negotiating or attempting to negotiate with NBK instead of Galleria 2425 Owner, LLC NBK interfered with these potential purchasers and with these potential business relationships. At least the following were interfered with in this fashion:

- a) Globix Investment,
- b) Ironwood Commercial Realty,
- c) Shah Firm, LLC, and

d) Jeb Brown Law.

74. Zaheer, has interfered with the Plaintiff's relationship with NBK

75. This interference by the Zaheer damaged Plaintiff in amounts to be determined after discovery

**COUNT 4: FRAUD AND FRAUDULENT INDUCEMENT**

76. Plaintiff repeats and realleges the allegations set forth in all preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

77. NBK never had any intention of living up to the Confidential Settlement Agreement. The Galleria 2425 Owner, LLC was winning the lawsuit against NBK, so NBK induced the Plaintiff into entering into the Confidential Settlement Agreement which NBK had no intention of living up to. This fraud works as an estoppel against NBK Plaintiff hereby sues NBK for fraud and fraudulent inducement

78. NBK knew at the time it entered into the Confidential Settlement Agreement it would deflect and tortiously interfere with the Galleria 2425 Owner, LLC's attempts to sell the 2425 Building so NBK would be able to foreclose on the building and take all of the value instead of just the value of the amounts otherwise owed at the time. The fraud, fraud in the inducement, and subsequent interference for all of which Plaintiff hereby sues NBK.

**COUNT 5: BUSINESS DISPARAGEMENT**

79. Plaintiff repeats and realleges the allegations set forth in all preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

80. The posting of the 2425 Building during any negotiation periods and/or the extended grace period when actual buyers were moving toward concluding a deal and when other

potential buyers were expressing interest in the 2425 Building, constituted business disparagement against the Plaintiff for which Plaintiff hereby sues NBK.

81. The efforts of Zaheer to make false accusations and representations about the Plaintiff's ownership interests, management, and decision making abilities constituted business disparagement against the Plaintiff for which the Plaintiff hereby sues Zaheer.

82. The business disparagement by the Defendants damaged Plaintiff in amounts to be determined after discovery.

**COUNT 6: UNJUST ENRICHMENT**

83. Plaintiff repeats and realleges the allegations set forth in all preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

84. If NBK is allowed to foreclose on the 2425 Building it will make an unconscionable profit and succeed in its "loan to own" gambit. The amount of its unjust enrichment for which Plaintiff hereby sues NBK is the difference between what NBK would have been owed (but for its breaches of the Confidential Settlement Agreement) under the Confidential Settlement Agreement and the true value of the building, for which Plaintiff hereby sue NBK.

**COUNT 7: CONSPIRACY**

85. Defendants Zaheer, in combination with NBK, agreed to work in concert with each other in order to interfere with Plaintiff's bankruptcy case, and to have it dismissed by making fraudulently claiming they had control over Naissance Galleria, LLC.

86. Defendants Zaheer, and NBK acted with the intent to harm plaintiff.

87. To accomplish the object of their agreement Zaheer, and NBK intentionally or negligently mischaracterized the effect of the state court temporary injunction, in order to confuse and disrupt Plaintiff's bankruptcy case, which resulted in dismissal.

88. The agreement to engage in this conduct proximately caused injury to plaintiff. Plaintiff's interests in Galleria 2425 Owner, LLC's sole asset, instead of being protected through a bankruptcy action, has now been posted for foreclosure on December 5<sup>th</sup>, 2023, which will irreparably harm Plaintiff.

**COUNT 8: ATTORNEYS' FEES**

89. Plaintiff repeats and realleges the allegations set forth in all preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

90. Plaintiff hereby sue Defendants for its reasonable and necessary attorneys' fees under breach of contract and under any statutory or common law right to recover same.

**VI.**

**APPLICATION FOR TEMPORARY INJUNCTION OR ORDER**

91. The Defendants have conspired with each other and others, or worked in parallel courses to get the bankruptcy of Plaintiff 2425 Galleria Owner, LLC dismissed so that Bank of Kuwait is not prohibited by the automatic stay from foreclosing. If a foreclosure takes place, the equity of Plaintiff will be wiped out and Plaintiff will have no assets and no adequate remedy at law to return the retrieve the assets or its value.

92. Temporary injunctive relief is necessary until such time as the merits of this case can be decided and the status quo is maintained pending resolution on the merits.

**APPLICATION FOR TEMPORARY RESTRAINING ORDER**

93. Plaintiff's application for a temporary restraining order is authorized by Tex. Civ. Prac. & Rem. Code §65.011(1) which allows applicants to the relief sought to restrain the Defendants from prejudicial acts; by Tex. Civ. Prac. & Rem. Code §65.011(3) which allows applicants to the relief sought under the principles of equity and laws of Texas related to

injunctions; by Tex. Civ. Prac. & Rem. Code § 65.011(5) which allows applicants to the relief sought when irreparable injury to business, good will, reputation and personal property is threatened; and by Tex. Bus. Orgs. Code § 152.211(b), allowing partners in a partnership to obtain an injunction to enforce rights under the Texas Business Organizations Code.

94. As set forth above, an emergency hearing on Plaintiff's Application for Temporary Restraining Order is necessary to conserve the Plaintiff's business status and maintain the status quo during the pendency of this lawsuit. Plaintiff would suffer material injury by the delay necessary to give notice. Any delay necessary for notice would lead to imminent and irreparable injury to property.

95. It is probable that Plaintiff will recover from Defendants after a trial on the merits because the facts set forth are verified and sets forth the Defendants wrongful conduct; and actions including seeking the sale of the business by the Defendants are wrongful and must be stopped.

96. If Plaintiff's application is not granted, harm is imminent because 1) Galleria 2425 Owner, LLC's sole asset will be foreclosed as a result of Defendants harmful actions on December 5<sup>th</sup>, 2023; 2) Defendants will continue to conspire with each other in a manner that is counter to the true interests of Naissance Galleria, LLC; and 3) Defendants will continue to violate the Temporary Injunction, as they have already done on at least three occasions, in order to interfere with Plaintiff's lawful attempts to preserve the 2425 Building. These harms are imminent and would cause irreparable injury with no other adequate legal remedy.

97. The harm that will result if the temporary restraining order is not issued is irreparable because Plaintiff has an interest in a unique piece of real estate which it will be wiped out in the event of foreclosure. Texas Courts repeatedly rule that "every piece of **real estate** is innately **[\*\*8]** unique. *See, e.g., Greater Houston Bank v. Conte*, 641 S.W.2d 407, 410 (Tex.

App.--Houston [14th [\*58] Dist.] 1982, no writ) ("It is well established law that each and every piece of **real estate** is unique. Therefore, if appellants were allowed to foreclose appellees would be irreparably harmed, since **real estate** is so unique."); *El Paso Dev. Co. v. Berryman*, 729 S.W.2d 883, 888 (Tex. App.--Corpus Christi 1987, no writ) ("Every piece of **real estate** is unique, and if foreclosure were allowed before a full determination of the usury claim, appellee would be irreparably harmed."). *Kotz v. Imperial Capital Bank*, 319 S.W.3d 54, 57-58 (Tex. App.—San Antonio 2010, no pet.).

### **VII. JURY DEMAND**

98. Plaintiff demands a jury trial and tenders the appropriate fee with this petition.

### **VIII. PRAYER**

99. For the reasons set forth above, Plaintiff asks that the Court enter a Temporary Restraining Order, and after a hearing, a Temporary Injunction, enjoining the Defendants in the following manners:

- a) NBK is restrained from 1) Foreclosing on, posting, reposting, or otherwise selling at auction the 2425 Building; and 2) transferring any Note and/or lien it holds or may hold relating to the 2425 Building; or 3) or interfering with the Plaintiff's business in any manner, including by acting in concert with another party.
- b) Actual damages including economic injuries & consequential damages;
- c) Attorney's fees;
- d) Exemplary damages;



- e) Prejudgment and post judgment interest;
- f) Court costs; and
- g) All other relief to which Plaintiff is entitled under both law and equity.

100. Plaintiff is willing to post bond.

Respectfully submitted,

**MATÍAS J. ADROGUÉ PLLC**

By: \_\_\_\_\_

Matías J. Adrogué

Texas State Bar No. 24012192

Leila M. El-Hakam

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**ATTORNEYS FOR PLAINTIFF**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing has been served to all counsel of record by hand delivery, fax transmittal, Certified mail, return receipt requested, electronic mail, e-service, and/or U.S. Mail, on this the 29<sup>th</sup> day of November, 2023.

\_\_\_\_\_  
Matías J. Adrogué

JURAT

My name is Ali Choudhri, my date of birth is 01/24/1980. My office address is 1001 West Loop South, Suite 700, Houston, Texas 77027. I declare under penalty of perjury that the facts and events set forth in the foregoing Amended Petition and Emergency Application for Temporary Restraining Order are within my personal knowledge and are true and correct.

Executed in Harris County, State of Texas, on November 29, 2023.

/s/Ali Choudhri

Ali Choudhri

Unofficial Copy Office of Marilyn Burgess District Clerk

**Automated Certificate of eService**

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Matias Adroque

Bar No. 24012192

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Envelope ID: 82036951

Filing Code Description: Amended Filing

Filing Description: Plaintiff's Amended Petition & Application for TRO

Status as of 11/29/2023 10:15 AM CST

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**ENTERED**

November 25, 2024

Nathan Ochsner, Clerk

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION****IN RE:****GALLERIA 2425 OWNER, LLC,****Debtor.**§  
§  
§  
§  
§  
§  
§**CASE NO: 23-34815****CHAPTER 11****ORDER DENYING MOTION (ECF 810)**

Before the Court is the Motion to Comply with the Gatekeeping Provisions of the Confirmed Chapter 11 Plan filed by Ali Choudhri (“Choudhri”) and the National Bank of Kuwait’s (“NBK”) Response to Ali Choudhri’s Motion to Comply with the Gatekeeping Provisions of the Confirmed Chapter 11 Plan (ECF No. 824). For the following reasons the motion is denied, with prejudice.

Choudhri by motion seeks to challenge or modify the “gatekeeping provisions” of the confirmed Chapter 11 Plan in this case so that he can continue to litigate with NBK. The Court stresses that the effect of the confirmed plan was to end the vexatious litigation between entities controlled by Choudhri and NBK. Choudhri continues to raise factual and legal issues which this Court has already considered and rejected.

The confirmed plan is under appeal but not by Choudhri only by a company he controls. The Court doubts that Choudhri has standing to make the claims he makes by motion. Irrespective of his lack of standing, he like all parties are bound by the terms of the confirmed plan.<sup>1</sup> There was no stay pending appeal and the Court continues to stand on the record in this case. If this Court has erred in any of its “gatekeeping provisions” then it welcomes an appropriate appellate review, which the Court assumes is ongoing. However, it will not revisit factual and legal issues that it has already litigated. The Court cannot sufficiently stress that Choudhri continues to raise and argue the same basic facts and claims that this Court has found lacked foundation and merit.

Choudhri’s claims the Court has not considered the factual and legal arguments he makes in his motion. The Court strongly rejects any such claim. The Court has had ample opportunity to assess Mr. Choudhri’s factual and legal arguments and has repeatedly rejected them. Choudhri’s purpose for pursuing these claims is improper and clearly vexatious.

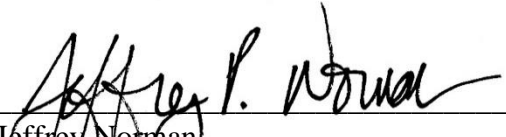
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<sup>1</sup> Section 1141(a) of the Bankruptcy Code explicitly states that a confirmed plan is binding on all parties.

The motion is all things denied, with prejudice. The movant is warned that future ongoing litigation at the trial court level is subject to sanctions by this Court.

**SO ORDERED.**

SIGNED 11/25/2024

  
\_\_\_\_\_  
Jeffrey Norman  
United States Bankruptcy Judge



The other parties to the appeal and their attorneys include the following:

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Respectfully submitted,

*/s/ J. Carl Cecere*

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*Attorney for 2425 WL, LLC and  
Ali Choudhri*

**CERTIFICATE OF SERVICE**

The undersigned certifies that on this 9th day of December, 2024, a true and correct copy of the foregoing was served on the following in accordance with the CM/ECF e-filing system, and upon all others who have consented to service in this case by registering to receive notices in this case through the CM/ECF e-filing system.

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*/s/ J. Carl Cecere*

**J. Carl Cecere**

## EXHIBIT 1

**ENTERED**

November 25, 2024

Nathan Ochsner, Clerk

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION****IN RE:****GALLERIA 2425 OWNER, LLC,****Debtor.**§  
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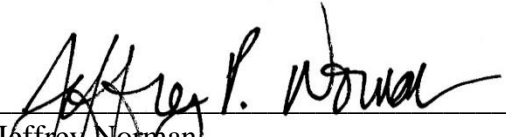
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**SO ORDERED.**

SIGNED 11/25/2024

  
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Jeffrey Norman  
United States Bankruptcy Judge